

1 STANLEY LAW GROUP
2 MATTHEW J. ZEVIN, SBN: 170736
3 225 Broadway, Suite 1350
4 San Diego, CA 92101
5 Telephone: (619) 235-5306
6 Facsimile: (815) 377-8419
7 e-mail: mzevin@aol.com

8 STANLEY LAW GROUP
9 MARC R. STANLEY, Texas SBN: 19046500
10 (*pro hac vice* to be filed)
11 MARTIN WOODWARD, Texas SBN: 00797693
12 (*pro hac vice* to be filed)
13 6116 North Central Expressway, Suite 1500
14 Dallas, TX 75206
15 Telephone: (214) 443-4300
16 Facsimile: (214) 443-0358
17 e-mail: marcstanley@mac.com
18 mwoodward@stanleylawgroup.com

19 Attorneys for Plaintiffs, Helene Cahen, Kerry J.
20 Tompulis, and Merrill Nisam
21 [Additional Counsel Listed on Signature Page]

22 **IN THE UNITED STATES DISTRICT COURT**

23 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

24 HELENE CAHEN, KERRY J. TOMPULIS,
25 and MERRILL NISAM,

26 Plaintiffs,

27 v.

28 TOYOTA MOTOR CORPORATION,
TOYOTA MOTOR SALES, U.S.A., INC.,
FORD MOTOR COMPANY, GENERAL
MOTORS LLC, and DOES 1 through 50,

Defendants.

CASE NO.

**COMPLAINT FOR BREACH OF
WARRANTY, BREACH OF CONTRACT,
AND VIOLATION OF CONSUMER
PROTECTION LAWS**

CLASS ACTION

DEMAND FOR JURY TRIAL

1 Plaintiffs Helene Cahen, Kerry J. Tompulis, and Merrill Nisam (“Plaintiffs”), individually
2 and on behalf of all others similarly situated (the “Class”), allege as follows:

3 **INTRODUCTION**

4 1. There are certain basic rules all automobile manufacturers must follow. This case
5 arises from a breach of these rules by the Defendants: Toyota Motor Corporation and Toyota
6 Motor Sales, U.S.A., Inc. (together, “Toyota”), Ford Motor Company (“Ford”), and General
7 Motors LLC (“GM”).

8 2. When Defendants sell or lease any vehicle to a customer, they have a duty to
9 ensure the vehicle functions properly and safely, and is free from defects. When they become
10 aware of a defect in their vehicles, they have an obligation to correct the defect or cease selling
11 the vehicles. When Defendants introduce a new technology in their vehicles, and tout its benefits,
12 they must test the technology to ensure that it functions properly. And when Defendants provide
13 a warranty to a customer, Defendants are bound to stand by that warranty.

14 3. But Defendants failed consumers in all of these areas when they sold or leased
15 vehicles that are susceptible to computer hacking and are therefore unsafe. Because Defendants
16 failed to ensure the basic electronic security of their vehicles, anyone can hack into them, take
17 control of the basic functions of the vehicle, and thereby endanger the safety of the driver and
18 others.

19 4. This is because Defendants’ vehicles contain more than 35 separate electronic
20 control units (ECUs), connected through a controller area network (“CAN” or “CAN bus”).
21 Vehicle functionality and safety depend on the functions of these small computers, the most
22 essential of which is how they communicate with one another.

23 5. The ECUs communicate by sending each other “CAN packets,” digital messages
24 containing small amounts of data. But if an outside source, such as a hacker, were able to send
25 CAN packets to ECUs on a vehicle’s CAN bus, the hacker could take control of such basic
26 functions of the vehicle as braking, steering, and acceleration – and the driver of the vehicle
27 would not be able to regain control.
28

1 6. Disturbingly, as Defendants have known, their CAN bus-equipped vehicles for
2 years have been (and currently are) susceptible to hacking, and their ECUs cannot detect and stop
3 hacker attacks on the CAN buses. For this reason, Defendants' vehicles are not secure, and are
4 therefore not safe.

5 7. Yet, Defendants have charged a substantial premium for their CAN bus-equipped
6 vehicles since their rollout. These defective vehicles are worth far less than are similar non-
7 defective vehicles, and far less than the defect-free vehicles the Plaintiffs and the other Class
8 members bargained for and thought they had received.

9 8. As a result of Defendants' unfair, deceptive, and/or fraudulent business practices,
10 and their failure to disclose the highly material fact that their vehicles were susceptible to hacking
11 and neither secure nor safe, owners and/or lessees of Defendants' CAN bus-equipped vehicles
12 have suffered losses in money and/or property. Had Plaintiffs and the other Class members
13 known of the defects at the time they purchased or leased their vehicles, they would not have
14 purchased or leased those vehicles, or would have paid substantially less for the vehicles than
15 they did.

16 9. Toyota manufactures and sells vehicles under the Toyota, Lexus, and Scion
17 names (the "Toyota Vehicles"); Ford manufactures and sells vehicles under the Ford, Lincoln,
18 and (until 2011) Mercury names (the "Ford Vehicles"); GM manufactures and sells vehicles
19 under the Buick, Cadillac, Chevrolet, and GMC names, and (until 2009) under the Hummer,
20 Pontiac, and Saturn names (the "GM Vehicles"). The CAN buses in all Toyota Vehicles, Ford
21 Vehicles, and GM Vehicles are essentially identical in that they are all susceptible to hacking and
22 thus suffer from the same defect. For purposes of this Complaint, all CAN bus-equipped vehicles
23 are referred to collectively as the "Class Vehicles" or "Defective Vehicles."

24 10. Plaintiffs bring this action individually and on behalf of all other current and
25 former owners or lessees of Toyota Vehicles, Ford Vehicles, and GM Vehicles equipped with
26 CAN buses. Plaintiffs seek damages, injunctive relief, and equitable relief for the conduct of
27 Defendants, as alleged in this complaint.
28

JURISDICTION

11. This Court has jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed Class consists of 100 or more members; the amount in controversy exceed \$5,000,000, exclusive of costs and interest; and minimal diversity exists. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

VENUE

12. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District. Plaintiffs Cahen and Nisam purchased Class Vehicles in this District, and Defendants have marketed, advertised, sold, and leased the Class Vehicles within this District.

PARTIES

13. Plaintiff Helene Cahen is an individual residing in Berkeley, California. In September 2008, Plaintiffs Cahen purchased a new 2008 Lexus RX 400 H from an authorized Lexus dealer in San Rafael, California. Plaintiff Cahen still owns this vehicle.

14. Plaintiff Kerry J. Tompulis is an individual residing in Beaverton, Oregon. In August 2014, Plaintiffs Tompulis leased a new 2014 Ford Escape from Landmark Ford, an authorized Ford dealer in Tigard, Oregon. Plaintiff Tompulis still leases this vehicle.

15. Plaintiff Merrill Nisam is an individual residing in Mill Valley, California. In March 2013, Plaintiffs Nisam purchased a new 2013 Chevrolet Volt from Novato Chevrolet, an authorized Chevrolet dealer in Novato, California. Plaintiff Nisam still owns this vehicle.

16. Defendant Toyota Motor Corporation ("TMC") is a Japanese corporation. TMC is the parent corporation of Toyota Motor Sales, U.S.A., Inc. TMC, through its various entities, designs, manufactures, markets, distributes and sells Toyota, Lexus and Scion automobiles in California and multiple other locations in the United States and worldwide.

17. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS") is incorporated and headquartered in California. TMS is Toyota's U.S. sales and marketing arm, which oversees sales and other operations in 49 states. TMS distributes Toyota, Lexus and Scion vehicles and sells these vehicles through its network of dealers.

1 18. Money received from the purchase of a Toyota Vehicle from a dealer flows from
2 the dealer to TMS. Money received by the dealer from a purchaser can be traced to TMS and
3 TMC.

4 19. TMS and TMC sell Toyota Vehicles through a network of dealers who are the
5 agents of TMS and TMC.

6 20. TMS and TMC are collectively referred to in this complaint as “Toyota” or the
7 “Toyota Defendants” unless identified as TMS or TMC.

8 21. At all times relevant to this action, Toyota manufactured, sold, leased, and
9 warranted the Toyota Vehicles at issue under the Toyota, Lexus, and Scion names throughout the
10 United States. Toyota and/or its agents designed, manufactured, and installed the defective CAN
11 buses in the Toyota Vehicles. Toyota also developed and disseminated the owner’s manuals and
12 warranty booklets, advertisements, and other promotional materials relating to the Toyota
13 Vehicles.

14 22. Defendant Ford Motor Company is a corporation doing business in all fifty states
15 (including the District of Columbia) and is organized under the laws of the State of Delaware,
16 with its principal place of business in Dearborn, Michigan.

17 23. At all times relevant to this action, Ford manufactured, sold, leased, and
18 warranted the Ford Vehicles at issue under the Ford, Lincoln, and (until 2011) Mercury names
19 throughout the United States. Ford and/or its agents designed, manufactured, and installed the
20 defective CAN buses in the Ford Vehicles. Ford also developed and disseminated the owner’s
21 manuals and warranty booklets, advertisements, and other promotional materials relating to the
22 Ford Vehicles.

23 24. Defendant General Motors LLC is a limited liability company formed under the
24 laws of the State of Delaware with its principal place of business in Detroit, Michigan. GM was
25 incorporated in 2009 and on July 10, 2009 acquired substantially all assets and assumed certain
26 liabilities of General Motors Corporation (“Old GM”) through a Section 363 sale under Chapter
27 11 of the U.S. Bankruptcy Code.
28

1 25. Among the liabilities and obligations expressly retained by GM after the
2 bankruptcy are the following:

3 From and after the Closing, Purchaser [GM] shall comply with the certification,
4 reporting and recall requirements of the National Traffic and Motor Vehicle Act,
5 the Transportation Recall Enhancement, Accountability and Documentation Act,
6 the Clean Air Act, the California Health and Safety Code, and similar laws, in each
case, to the extent applicable in respect of vehicles and vehicle parts manufactured
or distributed by [Old GM].

7 26. GM also expressly assumed:

8 All Liabilities arising under express written warranties of [Old GM] that are
9 specifically identified as warranties and delivered in connection with the sale of
10 new, certified used or pre-owned vehicles or new or remanufactured motor vehicle
11 parts and equipment (including service parts, accessories, engines and
transmissions) manufactured or sold by [Old GM] or Purchaser prior to or after the
Closing and (B) all obligations under Lemon Laws.

12 27. Because GM acquired and operated Old GM and ran it as a continuing business
13 enterprise, and because GM was aware from its inception of the CAN bus defects in the GM
14 Vehicles, GM is liable through successor liability for the deceptive and unfair acts and omissions
15 of Old GM, as alleged in this Complaint.

16 28. At all times relevant to this action, GM manufactured, sold, leased, and warranted
17 the GM Vehicles at issue under the Buick, Cadillac, Chevrolet, and GMC names, and (until 2009)
18 under the Hummer, Pontiac, and Saturn names throughout the United States. GM and/or its agents
19 designed, manufactured, and installed the defective CAN buses in the GM Vehicles. GM also
20 developed and disseminated the owner's manuals and warranty booklets, advertisements, and
21 other promotional materials relating to the GM Vehicles.

22 29. Plaintiffs do not know the true names and capacities of Defendants sued herein as
23 Does 1 through 50, and will amend this Complaint to set forth the true names and capacities of said
24 defendants, along with the appropriate charging allegations when the same have been ascertained.

25 **TOLLING OF THE STATUTE OF LIMITATIONS**

26 30. Any applicable statute(s) of limitations has been tolled by Defendants' knowing
27 and active concealment and denial of the facts alleged herein. Plaintiffs and the other Class
28 members could not have reasonably discovered the true, latent defective nature of the CAN buses

1 until shortly before this class action litigation was commenced.

2 31. Defendants were and remain under a continuing duty to disclose to Plaintiffs and
3 the other Class members the true character, quality, and nature of the Class Vehicles, that this
4 defect is a result of Defendants' design choices, and that it will require costly repairs, and
5 diminishes the resale value of the Class Vehicles. As a result of the active concealment by
6 Defendants, any and all statutes of limitations otherwise applicable to the allegations herein have
7 been tolled.

8 **FACTUAL ALLEGATIONS**

9 **How Defendants' CAN Buses Work**

10 32. Many modern automobiles, including the Class Vehicles, contain a number of
11 different networked electronic components that together monitor and control the vehicle. Class
12 Vehicles contain upwards of 35 electronic control units ("ECUs") networked together on a
13 controller area network ("CAN" or "CAN bus"). Crucially, the overall safety of the vehicle relies
14 on near real time communication between these various ECUs.¹

15 33. As stated by two researchers in a 2013 study funded by the U.S. Defense
16 Advanced Research Projects Agency ("DARPA"): "Drivers and passengers are strictly at the
17 mercy of the code running in their automobiles and, unlike when their web browser crashes or is
18 compromised, the threat to their physical well-being is real."²

19 34. The ECUs are networked together on one or more CAN buses, and they
20 communicate with one another by sending electronic messages comprised of small amounts of
21 data called CAN packets.³ The CAN packets are broadcast to all components on the CAN bus,
22

23 ¹ *Tracking & Hacking: Security & Privacy Gaps Out American Drivers at Risk*, A report written
24 by the staff of Senator Edward J. Markey (D-Massachusetts), http://www.markey.senate.gov/imo/media/doc/2015-02-06_MarkeyReport-Tracking_Hacking_CarSecurity%202.pdf (last
25 accessed February 20, 2015) (hereinafter "Markey Report") at 3; Dr. Charlie Miller & Chris
26 Valasek, Technical White Paper: *Adventures in Automotive Networks and Control Units*,
[http://www.ioactive.com/pdfs/IOActive_Adventures_in_Automotive_Networks_and_Control_](http://www.ioactive.com/pdfs/IOActive_Adventures_in_Automotive_Networks_and_Control_units.pdf)
27 [units.pdf](http://www.ioactive.com/pdfs/IOActive_Adventures_in_Automotive_Networks_and_Control_units.pdf) (last accessed February 20, 2015) (hereinafter "Miller & Valasek") at 5, 7-8.

28 ² Miller & Valasek at 4; *see also* Markey Report at 3.

³ Miller & Valasek at 4.

1 and each component decides whether it is the intended recipient of any given CAN packet.
 2 Notably, there is no source identifier or authentication built into CAN packets.

3 **Defendants' CAN Buses Are Susceptible to Dangerous Hacking**

4 35. The CAN standard was first developed in the mid-1980s and is a low-level
 5 protocol which does not intrinsically support any security features.⁴ Applications are expected to
 6 deploy their own security mechanisms; e.g., to authenticate each other.⁵ But if an outside source
 7 manages to insert messages onto a CAN bus, the ECUs will not be able to properly authenticate
 8 each other.⁶

9 36. This capability can be used maliciously. In particular, wireless technologies create
 10 vulnerabilities to hacking attacks that could be used to invade a user's privacy or modify the
 11 operation of a vehicle. An attacker with physical access to a CAN bus-equipped vehicle could
 12 insert malicious code or CAN packets – and could also remotely and wirelessly access a vehicle's
 13 CAN bus through Bluetooth connections.⁷

14 37. One journalist described the experience of driving a vehicle whose CAN bus was
 15 being hacked remotely (but under controlled circumstances) as follows:

16 As I drove to the top of the parking lot ramp, the car's engine suddenly shut off,
 17 and I started to roll backward. I expected this to happen, but it still left me wide-
 eyed.

18 I felt as though someone had just performed a magic trick on me. What ought to
 19 have triggered panic actually elicited a dumbfounded surprise in me. However, as
 20 the car slowly began to roll back down the ramp, surprise turned to alarm as the
 task of steering backwards without power brakes finally sank in.

21 This wasn't some glitch triggered by a defective ignition switch, but rather an
 22 orchestrated attack performed wirelessly, from the other side of the parking lot, by
 a security researcher.⁸

23
 24 ⁴ http://en.wikipedia.org/w/index.php?title=CAN_bus (last accessed February 20, 2015).

25 ⁵ *Id.*

26 ⁶ See Xavier Aaronson, *We Drove a Car While It Was Being Hacked*, <http://motherboard.vice.com/read/we-drove-a-car-while-it-was-being-hacked> (last accessed February 20, 2015).

27 ⁷ Miller & Valasek at 4; see also Markey Report at 3.

28 ⁸ Xavier Aaronson, *We Drove a Car While It Was Being Hacked*, <http://motherboard.vice.com/read/we-drove-a-car-while-it-was-being-hacked> (last accessed February 20, 2015).

Defendants Have Known for Years that Their CAN Bus-Equipped Vehicles Can Be Hacked

38. These security vulnerabilities have been known in the automotive industry – and, specifically, by Defendants – for years. Researchers at the University of California San Diego and University of Washington had discovered in 2011 that modern automobiles can be hacked in a number of different ways – and, crucially, that wireless communications allow a hacker to take control of a vehicle from a long distance.⁹

39. Building on this research, in a 2013 DARPA-funded study, two researchers demonstrated their ability to connect a laptop to the CAN bus of a 2010 Toyota Prius and a 2010 Ford Escape using a cable, send commands to different ECUs through the CAN, and thereby control the engine, brakes, steering and other critical vehicle components.¹⁰ In their initial tests with a laptop, the researchers were able to cause the cars to suddenly accelerate, turn, kill the brakes, activate the horn, control the headlights, and modify the speedometer and gas gauge readings.¹¹

40. Before the researchers went public with their 2013 findings, they shared the results with Toyota and Ford in the hopes that the companies would address the identified vulnerabilities.¹² The companies, however, did not.

Despite Selling Unsafe CAN-Bus Equipped Vehicles, Defendants Tout Their Safety

A. Toyota

41. Toyota has consistently marketed its vehicles as “safe” and portrayed safety as one of its highest priorities.

42. As Toyota states in one of its promotional materials:

Toyota believes that the ultimate goal of a society that values mobility is to eliminate traffic fatalities and injuries. Toyota’s Integrated Safety Management

⁹ Stephen Checkoway et al., *Comprehensive Experimental Analyses of Automotive Attack Surfaces*, <http://www.autosec.org/pubs/cars-usenixsec2011.pdf> (last accessed February 20, 2015).

¹⁰ See generally Miller & Valasek.

¹¹ See generally Miller & Valasek. A video of the researchers hacking and taking control of the operation of the cars can be viewed at <https://www.youtube.com/watch?v=oqe6S6m73Zw> (last accessed February 20, 2015).

¹² Markey Report at 3.

1 Concept sets the direction for safety technology development and vehicle
 2 development, and covers all aspects of driving by integrating individual vehicle
 3 safety technologies and systems rather than viewing them as independently
 functioning units.¹³

4 43. In another, Toyota states:

5 Pursuit for Vehicle Safety

6 Toyota has been implementing “safety” measures to help create safer vehicles.¹⁴

7 44. And in a third, Toyota states:

8 Toyota recognizes the importance of the driver being in ultimate control of a
 9 vehicle and is therefore aiming to introduce AHDA and other advanced driving
 10 support systems where the driver maintains control and the fun-to-drive aspect of
 controlling a vehicle is not compromised.¹⁵

11 **B. Ford**

12 45. Ford similarly markets and promotes its vehicles as “safe.” For example, in
 13 describing its 2015 Fusion, Ford states:

14 Safety

15 When you look over the impressive list of collision avoidance and occupant
 16 protection features, you’ll know how well-equipped Fusion is when it comes to
 you and your passengers’ safety.¹⁶

17 46. In describing its 2015 Focus, Ford states:

18 Safety

19 You don’t have to pick and choose when it comes to safety. Focus is well
 20 equipped with an impressive list of safety features.¹⁷

21 **C. GM**

22 47. GM also heavily promotes the safety of its vehicles. As GM states in one of its

23 ¹³ http://www.toyota-global.com/innovation/safety_technology/media-tour/ (last accessed
 24 February 20, 2015).

25 ¹⁴ http://www.toyota-global.com/innovation/safety_technology/safety_measurements/ (last
 26 accessed February 20, 2015).

27 ¹⁵ <http://www.toyota.com/esq/safety/active-safety/advanced-driving-support-system.html> (last
 28 accessed February 20, 2015).

¹⁶ <http://www.ford.com/cars/fusion/trim/s/safety/> (last accessed March 5, 2015).

¹⁷ <http://www.ford.com/cars/focus/trim/st/safety/> (last accessed March 5, 2015).

1 promotional materials:

2 GM's Commitment to Safety

3 Quality and safety are at the top of the agenda at GM, as we work on technology
4 improvements in crash avoidance and crashworthiness to augment the post-event
benefits of OnStar, like advanced automatic crash notification.¹⁸

5 48. And in a recent press release, GM stated:

6 GM Paves Way for Global Active Safety Development

7 Thu, Oct 23 2014

8 MILFORD, Mich. – General Motors today revealed that the development of one of
the largest active automotive safety testing areas in North America is nearly
complete at its Milford Proving Ground campus.

9 * * *

10 The Active Safety Testing Area, or ASTA, will complement the Milford Proving
Ground's vast test capabilities and increase GM's ability to bring the best new
11 safety technologies to the customer.¹⁹

12 **Defendants Expressly Warrant that They Will Repair or Replace Any Defects**

13 49. In connection with the sale (by purchase or lease) of each one of its new vehicles,
14 Defendants provide an express limited warranty on each vehicle. In those warranties, Defendants
15 promise to repair any defect or malfunction that arises in the vehicle during a defined period of
16 time. This warranty is provided by Defendants to the vehicle owner in writing and regardless of
17 what state the customer purchased his or her vehicle in. As further alleged below, the relevant
18 terms of the warranties in this case are essentially identical, regardless of the manufacturer or
19 model year.

20 50. Plaintiffs Cahen, Tompulis, and Nisam were each provided with a warranty and it
21 was a basis of the purchase of their vehicles. Plaintiffs and the members of the Class experienced
22 defects within the warranty period. However, despite the existence of the express warranties
23 provided to Plaintiffs and the members of the Class, Defendants have failed to honor the terms of
24 the warranties by failing to correct the CAN bus defects at no charge.

25
26 ¹⁸ http://www.gm.com/vision/quality_safety/gms_commitment_tosafety.html (last accessed
27 March 5, 2015)

28 ¹⁹ http://www.gm.com/article.content_pages_news_us_en_2014_oct_1023-active-safety.~content~gmcom~home~vision~quality_safety.html (last accessed March 5, 2015).

A. Toyota's warranty

51. In its Limited Warranties and in advertisements, brochures, and through other statements in the media, Toyota expressly warranted that it would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. The following uniform language appears in all Toyota Warranty booklets:

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first. . . .

B. Ford's warranty

52. In its Limited Warranties and in advertisements, brochures, and through other statements in the media, Ford expressly warranted that it would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. The following uniform language appears in all Ford Warranty booklets:

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

* * *

Your Bumper to Bumper Coverage lasts for three years – unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods. . . .

C. GM's warranty

53. In its Limited Warranties and in advertisements, brochures, and through other

statements in the media, GM expressly warranted that it would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. The following uniform language appears in all GM Warranty booklets:

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first. . . .

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

CLASS ALLEGATIONS

54. Plaintiffs bring this action on behalf of themselves and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following classes:

All persons or entities in the United States who are current or former owners and/or lessees of a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus (the "Nationwide Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus in the State of California (the "California Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus in the State of Alabama (the "Alabama Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus in the State of Alaska (the "Alaska Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus in the State of Arizona (the "Arizona Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or GM Vehicle equipped with a CAN bus in the State of Arkansas (the "Arkansas Class").

1 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
2 GM Vehicle equipped with a CAN bus in the State of Colorado (the "Colorado
Class").

3 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
4 GM Vehicle equipped with a CAN bus in the State of Connecticut (the
"Connecticut Class").

5 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
6 GM Vehicle equipped with a CAN bus in the State of Delaware (the "Delaware
Class").

7 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
8 GM Vehicle equipped with a CAN bus in the District of Columbia (the "District of
Columbia Class").

9 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
10 GM Vehicle equipped with a CAN bus in the State of Florida (the "Florida
Class").

11 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
12 GM Vehicle equipped with a CAN bus in the State of Georgia (the "Georgia
Class").

13 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
14 GM Vehicle equipped with a CAN bus in the State of Hawaii (the "Hawaii
Class").

15 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
16 GM Vehicle equipped with a CAN bus in the State of Idaho (the "Idaho Class").

17 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
18 GM Vehicle equipped with a CAN bus in the State of Illinois (the "Illinois Class").

19 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
20 GM Vehicle equipped with a CAN bus in the State of Indiana (the "Indiana
Class").

21 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
22 GM Vehicle equipped with a CAN bus in the State of Iowa (the "Iowa Class").

23 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
24 GM Vehicle equipped with a CAN bus in the State of Kansas (the "Kansas
Class").

25 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
26 GM Vehicle equipped with a CAN bus in the State of Kentucky (the "Kentucky
Class").

27 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
28 GM Vehicle equipped with a CAN bus in the State of Louisiana (the "Louisiana
Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
GM Vehicle equipped with a CAN bus in the State of Maine (the "Maine Class").

1 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
2 GM Vehicle equipped with a CAN bus in the State of Maryland (the "Maryland
Class").

3 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
4 GM Vehicle equipped with a CAN bus in the State of Massachusetts (the
"Massachusetts Class").

5 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
6 GM Vehicle equipped with a CAN bus in the State of Michigan (the "Michigan
Class").

7 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
8 GM Vehicle equipped with a CAN bus in the State of Minnesota (the "Minnesota
Class").

9 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
10 GM Vehicle equipped with a CAN bus in the State of Mississippi (the
"Mississippi Class").

11 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
12 GM Vehicle equipped with a CAN bus in the State of Missouri (the "Missouri
Class").

13 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
14 GM Vehicle equipped with a CAN bus in the State of Montana (the "Montana
Class").

15 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
16 GM Vehicle equipped with a CAN bus in the State of Nebraska (the "Nebraska
Class").

17 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
18 GM Vehicle equipped with a CAN bus in the State of Nevada (the "Nevada
Class").

19 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
20 GM Vehicle equipped with a CAN bus in the State of New Hampshire (the "New
Hampshire Class").

21 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
22 GM Vehicle equipped with a CAN bus in the State of New Jersey (the "New
Jersey Class").

23 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
24 GM Vehicle equipped with a CAN bus in the State of New Mexico (the "New
Mexico Class").

25 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
26 GM Vehicle equipped with a CAN bus in the State of New York (the "New York
Class").

27 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
28 GM Vehicle equipped with a CAN bus in the State of North Carolina (the "North
Carolina Class").

1 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
2 GM Vehicle equipped with a CAN bus in the State of North Dakota (the "North
Dakota Class").

3 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
4 GM Vehicle equipped with a CAN bus in the State of Ohio (the "Ohio Class").

5 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
6 GM Vehicle equipped with a CAN bus in the State of Oklahoma (the "Oklahoma
Class").

7 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
8 GM Vehicle equipped with a CAN bus in the State of Oregon (the "Oregon
Class").

9 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
10 GM Vehicle equipped with a CAN bus in the State of Pennsylvania (the
"Pennsylvania Class").

11 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
12 GM Vehicle equipped with a CAN bus in the State of Rhode Island (the "Rhode
Island Class").

13 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
14 GM Vehicle equipped with a CAN bus in the State of South Carolina (the "South
Carolina Class").

15 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
16 GM Vehicle equipped with a CAN bus in the State of South Dakota (the "South
Dakota Class").

17 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
18 GM Vehicle equipped with a CAN bus in the State of Tennessee (the "Tennessee
Class").

19 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
20 GM Vehicle equipped with a CAN bus in the State of Texas (the "Texas Class").

21 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
22 GM Vehicle equipped with a CAN bus in the State of Utah (the "Utah Class").

23 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
24 GM Vehicle equipped with a CAN bus in the State of Vermont (the "Vermont
Class").

25 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
26 GM Vehicle equipped with a CAN bus in the State of Virginia (the "Virginia
Class").

27 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
28 GM Vehicle equipped with a CAN bus in the State of Washington (the
"Washington Class").

All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
GM Vehicle equipped with a CAN bus in the State of West Virginia (the "West
Virginia Class").

1 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
 2 GM Vehicle equipped with a CAN bus in the State of Wisconsin (the “Wisconsin
 Class”).

3 All persons or entities who purchased or leased a Toyota Vehicle, Ford Vehicle, or
 4 GM Vehicle equipped with a CAN bus in the State of Wyoming (the “Wyoming
 Class”).

5 (Collectively, the “Class,” unless otherwise noted).

6 55. Excluded from the Class are Defendants and their subsidiaries and affiliates; all
 7 persons who make a timely election to be excluded from the Class; governmental entities; and the
 8 judge to whom this case is assigned and his/her immediate family.

9 56. Plaintiffs reserve the right to revise the Class definition based upon information
 10 learned through discovery.

11 57. Certification of Plaintiffs’ claims for class-wide treatment is appropriate because
 12 Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as
 13 would be used to prove those elements in individual actions alleging the same claim.

14 58. This action has been brought and may be properly maintained on behalf of each of
 15 the Classes proposed herein under Federal Rule of Civil Procedure 23.

16 59. Numerosity. Federal Rule of Civil Procedure 23(a)(1): The members of the Class
 17 are so numerous and geographically dispersed that individual joinder of all Class members is
 18 impracticable. While Plaintiffs are informed and believe that there are not less than tens of
 19 thousands of members of the Class, the precise number of Class members is unknown to
 20 Plaintiffs, but may be ascertained from Defendants’ books and records. Class members may be
 21 notified of the pendency of this action by recognized, Court-approved notice dissemination
 22 methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

23 60. Commonality and Predominance. Federal Rule of Civil Procedure 23(a)(2) and
 24 23(b)(3): This action involves common questions of law and fact, which predominate over any
 25 questions affecting individual Class members, including, without limitation:

- 26 a) Whether Defendants engaged in the conduct alleged herein;
- 27 b) Whether Defendants designed, advertised, marketed, distributed, leased,
 28 sold, or otherwise placed Class Vehicles into the stream of commerce in the United States;

- 1 c) Whether the CAN buses in the Class Vehicles contains a defect;
- 2 d) Whether such defect can cause the Class Vehicles to malfunction;
- 3 e) Whether Defendants knew about the defect and, if so, how long
- 4 Defendants have known of the defect;
- 5 f) Whether Defendants designed, manufactured, marketed, and distributed
- 6 Class Vehicles with defective CAN buses;
- 7 g) Whether Defendants' conduct violates consumer protection statutes,
- 8 warranty laws, and other laws as asserted herein;
- 9 h) Whether Defendants knew or reasonably should have known of the defects
- 10 in the Class Vehicles before it sold or leased them to Class members;
- 11 i) Whether Plaintiffs and the other Class members are entitled to equitable
- 12 relief, including, but not limited to, restitution or injunctive relief; and
- 13 j) Whether Plaintiffs and the other Class members are entitled to damages
- 14 and other monetary relief and, if so, in what amount.

15 61. Typicality. Federal Rule of Civil Procedure 23(a)(3): Plaintiffs' claims are typical
 16 of the other Class members' claims because, among other things, all Class members were
 17 comparably injured through Defendants' wrongful conduct as described above.

18 62. Adequacy. Federal Rule of Civil Procedure 23(a)(4): Plaintiffs are adequate Class
 19 representatives because their interests do not conflict with the interests of the other members of
 20 the Classes each respectively seeks to represent; Plaintiffs have retained counsel competent and
 21 experienced in complex class action litigation; and Plaintiffs intend to prosecute this action
 22 vigorously. The Classes' interests will be fairly and adequately protected by Plaintiffs and their
 23 counsel.

24 63. Declaratory and Injunctive Relief. Federal Rule of Civil Procedure 23(b)(2):
 25 Defendants have acted or refused to act on grounds generally applicable to Plaintiffs and the other
 26 members of the Classes, thereby making appropriate final injunctive relief and declaratory relief,
 27 as described below, with respect to the Class as a whole.

28 64. Superiority. Federal Rule of Civil Procedure 23(b)(3): A class action is superior

1 to any other available means for the fair and efficient adjudication of this controversy, and no
 2 unusual difficulties are likely to be encountered in the management of this class action. The
 3 damages or other financial detriment suffered by Plaintiffs and the other Class members are
 4 relatively small compared to the burden and expense that would be required to individually
 5 litigate their claims against Defendants, so it would be impracticable for Nationwide and
 6 California Class members to individually seek redress for Defendants' wrongful conduct. Even if
 7 Class members could afford individual litigation, the court system could not. Individualized
 8 litigation creates a potential for inconsistent or contradictory judgments, and increases the delay
 9 and expense to all parties and the court system. By contrast, the class action device presents far
 10 fewer management difficulties, and provides the benefits of single adjudication, economy of
 11 scale, and comprehensive supervision by a single court.

12 **VIOLATIONS ALLEGED**

13 **Claims Brought on Behalf of the Nationwide Class**

14 **COUNT I**

15 **Violation of Magnuson-Moss Warranty Act**

16 **(15 U.S.C. Sections 2301, *et seq.*)**

17 65. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 18 forth herein.

19 66. Plaintiffs bring this Count on behalf of the Nationwide Class.

20 67. Plaintiffs are "consumers" within the meaning of the Magnuson-Moss Warranty
 21 Act, 15 U.S.C. § 2301(3).

22 68. Defendants are "suppliers" and "warrantors" within the meaning of the
 23 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

24 69. The Class Vehicles are "consumer products" within the meaning of the
 25 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1). 15 U.S.C. § 2301(d)(1) provides a cause of
 26 action for any consumer who is damaged by the failure of a warrantor to comply with a written or
 27 implied warranty.

28 70. Defendants' express warranties are written warranties within the meaning of the

1 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6). The Class Vehicles' implied warranties are
2 covered under 15 U.S.C. § 2301(7).

3 71. Defendants breached these warranties as described in more detail above. Without
4 limitation, the Class Vehicles are equipped with CAN buses, a defective electronic unit within the
5 Class Vehicles. The Class Vehicles share a common design defect in that the CAN buses fail to
6 operate as represented by Defendants.

7 72. Plaintiffs and the other Nationwide Class members have had sufficient direct
8 dealings with either Defendants or their agents (dealerships and technical support) to establish
9 privity of contract between Defendants, on one hand, and Plaintiffs and each of the other
10 Nationwide Class members on the other hand. Nonetheless, privity is not required here because
11 Plaintiffs and each of the other Nationwide Class members are intended third-party beneficiaries
12 of contracts between Defendants and their dealers, and specifically, of Defendants' implied
13 warranties. The dealers were not intended to be the ultimate consumers of the Class Vehicles and
14 have no rights under the warranty agreements provided with the Class Vehicles; the warranty
15 agreements were designed for and intended to benefit the consumers only.

16 73. Affording Defendants a reasonable opportunity to cure their breach of written
17 warranties would be unnecessary and futile here. Indeed, Plaintiffs have already done so, and
18 Defendants have failed to cure the defects. At the time of sale or lease of each Class Vehicle,
19 Defendants knew, should have known, or were reckless in not knowing of their
20 misrepresentations and omissions concerning the Class Vehicles' inability to perform as
21 warranted, but nonetheless failed to rectify the situation and/or disclose the defective design.
22 Under the circumstances, the remedies available under any informal settlement procedure would
23 be inadequate and any requirement that Plaintiffs resort to an informal dispute resolution
24 procedure and/or afford Defendants a reasonable opportunity to cure their breach of warranties is
25 excused and thereby deemed satisfied.

26 74. Plaintiffs and the other Nationwide Class members would suffer economic
27 hardship if they returned their Class Vehicles but did not receive the return of all payments made
28 by them. Because Defendants are refusing to acknowledge any revocation of acceptance and

1 return immediately any payments made, Plaintiffs and the other Nationwide Class members have
2 not re-accepted their Class Vehicles by retaining them.

3 75. The amount in controversy of Plaintiffs' individual claims meets or exceeds the
4 sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of
5 interest and costs, computed on the basis of all claims to be determined in this lawsuit.

6 76. Plaintiffs, individually and on behalf of the other Nationwide Class members,
7 seek all damages permitted by law, including diminution in value of the Class Vehicles, in an
8 amount to be proven at trial.

9 **Claims Brought on Behalf of the California Class**

10 **COUNT II**

11 **Violation of California Unfair Competition Law**
12 **(California Business & Professions Code Sections 17200, *et seq.*)**

13 77. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
14 forth herein.

15 78. Plaintiffs bring this Count on behalf of the California Class.

16 79. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200,
17 *et seq.*, proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent
18 business act or practice and unfair, deceptive, untrue or misleading advertising."

19 80. Defendants' conduct, as described herein, was and is in violation of the UCL.
20 Defendants' conduct violates the UCL in at least the following ways:

21 a) By knowingly and intentionally concealing from Plaintiffs and the other
22 California Class members that the Class Vehicles suffer from a design defect while obtaining
23 money from Plaintiffs;

24 b) By marketing Class Vehicles as possessing functional and defect-free
25 electronic units;

26 c) By refusing or otherwise failing to repair and/or replace defective CAN
27 buses in Class Vehicles;

28 d) By violating federal laws, including the Magnuson-Moss Warranty Act,

1 15 U.S.C. § 2301; and

2 e) By violating other California laws, including Cal. Civ. Code §§ 1709,
3 1710, and 1750, *et seq.*, and Cal. Comm. Code § 2313.

4 81. Defendants' misrepresentations and omissions alleged herein caused Plaintiffs
5 and the other California Class members to make their purchases or leases of their Class Vehicles.
6 Absent those misrepresentations and omissions, Plaintiffs and the other California Class members
7 would not have purchased or leased these Vehicles, would not have purchased or leased these
8 Class Vehicles at the prices they paid, and/or would have purchased or leased less expensive
9 alternative vehicles that did not contain CAN buses.

10 82. Accordingly, Plaintiffs and the other California Class members have suffered
11 injury in fact including lost money or property as a result of Defendants' misrepresentations and
12 omissions.

13 83. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts or
14 practices by Defendants under Cal. Bus. & Prof. Code § 17200.

15 84. Plaintiffs request that this Court enter such orders or judgments as may be
16 necessary to enjoin Defendants from continuing their unfair, unlawful, and/or deceptive practices
17 and to restore to Plaintiffs and members of the Class any money Defendants acquired by unfair
18 competition, including restitution and/or restitutionary disgorgement, as provided in Cal. Bus. &
19 Prof. Code § 17203 and Cal. Civ. Code § 3345; and for such other relief set forth below.

20 **COUNT III**

21 **Violation of California Consumers Legal Remedies Act** 22 **(California Civil Code Sections 1750, *et seq.*)**

23 85. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
24 forth herein.

25 86. Plaintiffs bring this Count on behalf of the California Class.

26 87. California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750,
27 *et seq.*, proscribes "unfair methods of competition and unfair or deceptive acts or practices
28 undertaken by any person in a transaction intended to result or which results in the sale or lease of

1 goods or services to any consumer.”

2 88. The Class Vehicles are “goods” as defined in Cal. Civ. Code § 1761(a).

3 89. Plaintiffs and the other California class members are “consumers” as defined in
4 Cal. Civ. Code § 1761(d), and Plaintiffs, the other California class members, and Defendants are
5 “persons” as defined in Cal. Civ. Code § 1761(c).

6 90. As alleged above, Defendants made numerous representations concerning the
7 benefits and safety features of the Class Vehicles that were misleading.

8 91. In purchasing or leasing the Class Vehicles, Plaintiffs and the other California
9 Class members were deceived by Defendants’ failure to disclose that the Class Vehicles were
10 equipped with defective CAN buses.

11 92. Defendants’ conduct, as described hereinabove, was and is in violation of the
12 CLRA.

13 93. Defendants’ conduct violates at least the following enumerated CLRA provisions:

14 a) Cal. Civ. Code § 1770(a)(5): Representing that goods have characteristics,
15 uses, and benefits which they do not have;

16 b) Cal. Civ. Code § 1770(a)(7): Representing that goods are of a particular
17 standard, quality, or grade, if they are of another;

18 c) Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell
19 them as advertised; and

20 d) Cal. Civ. Code § 1770(a)(16): Representing that goods have been supplied
21 in accordance with a previous representation when they have not.

22 94. Plaintiffs and the other California Class members have suffered injury in fact and
23 actual damages resulting from Defendants’ material omissions and misrepresentations because
24 they paid an inflated purchase or lease price for the Class Vehicles.

25 95. Defendants knew, should have known, or were reckless in not knowing of the
26 defective design and/or manufacture of the CAN buses, and that the CAN buses were not suitable
27 for their intended use.

28 96. The facts concealed and omitted by Defendants to Plaintiffs and the other

1 California Class members are material in that a reasonable consumer would have considered them
 2 to be important in deciding whether to purchase or lease the Class Vehicles or pay a lower price.
 3 Had Plaintiffs and the other California Class members known about the defective nature of the
 4 Class Vehicles and their CAN buses, they would not have purchased or leased the Class Vehicles
 5 or would not have paid the prices they paid in fact.

6 97. Concurrently with the filing of this Complaint, Plaintiffs are providing
 7 Defendants with notice of their violations of the CLRA pursuant to Cal. Civ. Code § 1782(a).

8 98. Plaintiffs' and the other California Class members' injuries were proximately
 9 caused by Defendants' fraudulent and deceptive business practices. Therefore, Plaintiffs and the
 10 other California Class members are entitled to equitable and monetary relief under the CLRA. At
 11 this time, until thirty days after the date of the pre-suit demand letter, Plaintiffs seek only
 12 equitable relief and not damages under the CLRA. If Defendants do not comply in full with
 13 Plaintiffs' demand letter, Plaintiffs will amend this Complaint to add a claim for damages after
 14 thirty days.

15 **COUNT IV**

16 **Violation of California False Advertising Law** 17 **(California Business & Professions Code Sections 17500, et seq.)**

18 99. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 19 forth herein.

20 100. Plaintiffs bring this Count on behalf of the California Class.

21 101. California Bus. & Prof. Code § 17500 states: "It is unlawful for any . . .
 22 corporation . . . with intent directly or indirectly to dispose of real or personal property . . . to
 23 induce the public to enter into any obligation relating thereto, to make or disseminate or cause to
 24 be made or disseminated . . . from this state before the public in any state, in any newspaper or
 25 other publication, or any advertising device, . . . or in any other manner or means whatever,
 26 including over the Internet, any statement . . . which is untrue or misleading, and which is known,
 27 or which by the exercise of reasonable care should be known, to be untrue or misleading."

28 102. Defendants caused to be made or disseminated through California and the United

1 States, through advertising, marketing and other publications, statements that were untrue or
2 misleading, and which were known, or which by the exercise of reasonable care should have been
3 known to Defendants, to be untrue and misleading to consumers, including Plaintiffs and the
4 other Class members.

5 103. Defendants have violated § 17500 because the misrepresentations and omissions
6 regarding the safety, reliability, and functionality of their Class Vehicles as set forth in this
7 Complaint were material and likely to deceive a reasonable consumer.

8 104. Plaintiffs and the other Class members have suffered an injury in fact, including
9 the loss of money or property, as a result of Defendants' unfair, unlawful, and/or deceptive
10 practices. In purchasing or leasing their Class Vehicles, Plaintiffs and the other Class members
11 relied on the misrepresentations and/or omissions of Defendants with respect to the safety and
12 reliability of the Class Vehicles. Defendants' representations turned out not to be true because the
13 Class Vehicles are distributed with faulty and defective in-car communication and entertainment
14 systems, rendering certain safety, communication, navigational, and entertainment functions
15 inoperative. Had Plaintiffs and the other Class members known this, they would not have
16 purchased or leased their Class Vehicles and/or paid as much for them. Accordingly, Plaintiffs
17 and the other Class members overpaid for their Class Vehicles and did not receive the benefit of
18 their bargain.

19 105. All of the wrongful conduct alleged herein occurred, and continues to occur, in
20 the conduct of Defendants' business. Defendants' wrongful conduct is part of a pattern or
21 generalized course of conduct that is still perpetuated and repeated, both in the State of California
22 and nationwide.

23 106. Plaintiffs, individually and on behalf of the other Class members, request that this
24 Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing
25 their unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs and the other Class
26 members any money Defendants acquired by unfair competition, including restitution and/or
27 restitutionary disgorgement, and for such other relief set forth below.
28

COUNT V

**Breach of Implied Warranty of Merchantability
(California Commercial Code Section 2314)**

107. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

108. Plaintiffs bring this Count on behalf of the California Class.

109. Defendants are and were at all relevant times merchants with respect to motor vehicles under Cal. Com. Code § 2104.

110. A warranty that the Class Vehicles were in merchantable condition was implied by law in the instant transaction, pursuant to Cal. Com. Code § 2314.

111. These Class Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Class Vehicles are inherently defective in that there are defects in the CAN buses; and the CAN buses were not adequately designed, manufactured, and tested.

112. Defendants were provided notice of these issues by research studies, and by this Complaint, before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

113. Plaintiffs and the other Class members have had sufficient direct dealings with either Defendants or their agents (dealerships) to establish privity of contract between Plaintiffs and the other Class members. Notwithstanding this, privity is not required in this case because Plaintiffs and the other Class members are intended third-party beneficiaries of contracts between Defendants and their dealers; specifically, they are the intended beneficiaries of Defendants' implied warranties. The dealers were not intended to be the ultimate consumers of the Class Vehicles and have no rights under the warranty agreements provided with the Class Vehicles; the warranty agreements were designed for and intended to benefit the ultimate consumers only.

114. Finally, privity is also not required because Plaintiffs' and the other Class members' Class Vehicles are dangerous instrumentalities due to the aforementioned defects and nonconformities.

115. As a direct and proximate result of Defendants' breach of the warranties of merchantability, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial.

COUNT VI

Breach of Contract/Common Law Warranty (Based on California Law)

116. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

117. Plaintiffs bring this Count on behalf of the California Class.

118. To the extent Defendants' limited remedies are deemed not to be warranties under California's Commercial Code, Plaintiffs, individually and on behalf of the other Class members, plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants and/or warranted the quality or nature of those services to Plaintiffs and the other Class members.

119. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles evidencing faulty and defective CAN buses, or to replace them.

120. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT VII

Fraud by Concealment (Based on California Law)

121. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

122. Plaintiffs bring this Count on behalf of the California Class.

1 123. As set forth above, Defendants concealed and/or suppressed material facts
2 concerning the safety, quality, functionality, and reliability of their Class Vehicles.

3 124. Defendants had a duty to disclose these safety, quality, functionality, and
4 reliability issues because they consistently marketed their Class Vehicles as safe and proclaimed
5 that safety is one of Defendants' highest corporate priorities. Once Defendants made
6 representations to the public about safety, quality, functionality, and reliability, Defendants were
7 under a duty to disclose these omitted facts, because where one does speak one must speak the
8 whole truth and not conceal any facts which materially qualify those facts stated. One who
9 volunteers information must be truthful, and the telling of a half-truth calculated to deceive is
10 fraud.

11 125. In addition, Defendants had a duty to disclose these omitted material facts
12 because they were known and/or accessible only to Defendants which has superior knowledge
13 and access to the facts, and Defendants knew they were not known to or reasonably discoverable
14 by Plaintiffs and the other Class members. These omitted facts were material because they
15 directly impact the safety, quality, functionality, and reliability of the Class Vehicles.

16 126. Whether or not a vehicle is susceptible to hacking as a result of the defect alleged
17 herein is a material safety concern. Defendants possessed exclusive knowledge of the defect
18 rendering the Class Vehicles inherently more dangerous and unreliable than similar vehicles.

19 127. Defendants actively concealed and/or suppressed these material facts, in whole or
20 in part, with the intent to induce Plaintiffs and the other Class members to purchase or lease Class
21 Vehicles at a higher price for the Class Vehicles, which did not match the Class Vehicles' true
22 value.

23 128. Defendants still have not made full and adequate disclosure and continues to
24 defraud Plaintiffs and the other Class members.

25 129. Plaintiffs and the other Class members were unaware of these omitted material facts
26 and would not have acted as they did if they had known of the concealed and/or suppressed facts.
27 Plaintiffs' and the other Class members' actions were justified. Defendants were in exclusive
28 control of the material facts and such facts were not known to the public, Plaintiffs, or the Class.

130. As a result of the concealment and/or suppression of the facts, Plaintiffs and the other Class members sustained damage.

131. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the other Class members' rights and well-being to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

COUNT VIII

Violation of Song-Beverly Consumer Warranty Act for Breach of Express Warranties (California Civil Code Sections 1791.2 & 1793.2(d))

132. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

133. Plaintiffs bring this Count on behalf of the California Class.

134. Plaintiffs and the other Class members who purchased or leased the Class Vehicles in California are "buyers" within the meaning of Cal. Civ. Code § 1791(b).

135. The Class Vehicles are "consumer goods" within the meaning of Cal. Civ. Code § 1791(a).

136. Defendants are "manufacturers" of the Class Vehicles within the meaning of Cal. Civ. Code § 1791(j).

137. Plaintiffs and the other Class members bought/leased new motor vehicles manufactured by Defendants.

138. Defendants made express warranties to Plaintiffs and the other Class members within the meaning of Cal. Civ. Code §§ 1791.2 and 1793.2, as described above.

139. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicles' Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota. . . . Coverage is for 36 months or 36,000 miles, whichever occurs first. . . .

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service. . . .

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years – unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods. . . .

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first. . . .

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

140. As set forth above in detail, the Class Vehicles are inherently defective in that there are defects in the Class Vehicles' CAN buses that render the vehicles susceptible to hacking and thus dangerous, defects that were and continue to be covered by Defendants' express warranties, and these defects substantially impair the use, value, and safety of Defendants' Class Vehicles to reasonable consumers like Plaintiffs and the other Class members.

141. Defendants did not promptly replace or buy back the Class Vehicles of Plaintiffs and the other Class members.

142. As a result of Defendants' breach of their express warranties, Plaintiffs and the other Class members received goods whose dangerous condition substantially impairs their value to Plaintiffs and the other Class members. Plaintiffs and the other Class members have been damaged as a result of the diminished value of Defendants' products, the products' malfunctioning, and the nonuse of their Class Vehicles.

143. Pursuant to Cal. Civ. Code §§ 1793.2 & 1794, Plaintiffs and the other Class members are entitled to damages and other legal and equitable relief including, at their election, the purchase price of their Class Vehicles, or the overpayment or diminution in value of their Class Vehicles.

144. Pursuant to Cal. Civ. Code § 1794, Plaintiffs and the other Class members are entitled to costs and attorneys' fees.

COUNT IX

Violation of Song-Beverly Consumer Warranty Act for Breach of Implied Warranty of Merchantability (California Civil Code Sections 1791.1 and 1792)

145. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

146. Plaintiffs bring this Count on behalf of the California Class.

147. Plaintiffs and the other Class members who purchased or leased the Class Vehicles in California are "buyers" within the meaning of Cal. Civ. Code § 1791(b).

1 148. The Class Vehicles are “consumer goods” within the meaning of Cal. Civ. Code
2 § 1791(a).

3 149. Defendants are “manufacturers” of the Class Vehicles within the meaning of Cal.
4 Civ. Code § 1791(j).

5 150. Defendants impliedly warranted to Plaintiffs and the other Class members that
6 their Class Vehicles were “merchantable” within the meaning of Cal. Civ. Code §§ 1791.1(a) &
7 1792, however, the Class Vehicles do not have the quality that a buyer would reasonably expect.

8 151. Cal. Civ. Code § 1791.1(a) states:

9 “Implied warranty of merchantability” or “implied warranty that goods are
10 merchantable” means that the consumer goods meet each of the following:

- 11 a. Pass without objection in the trade under the contract description.
- 12 b. Are fit for the ordinary purposes for which such goods are used.
- 13 c. Are adequately contained, packaged, and labeled.
- 14 d. Conform to the promises or affirmations of fact made on the container or
15 label.

16 152. The Class Vehicles would not pass without objection in the automotive trade
17 because of the defects in the Class Vehicles’ CAN buses that cause crucial functions of the Class
18 Vehicles to be susceptible to hacking.

19 153. Because of the defects in the Class Vehicles’ CAN buses that cause crucial
20 functions of the Class Vehicles to be susceptible to hacking, they are not safe to drive and thus not
21 fit for ordinary purposes.

22 154. The Class Vehicles are not adequately labeled because the labeling fails to
23 disclose the defects in the Class Vehicles’ CAN buses that cause crucial functions of the Class
24 Vehicles to be susceptible to hacking.

25 155. Defendants breached the implied warranty of merchantability by manufacturing
26 and selling Class Vehicles containing defects associated with the CAN buses. Furthermore, these
27 defects have caused Plaintiffs and the other Class members to not receive the benefit of their
28 bargain and have caused Class Vehicles to depreciate in value.

29 156. As a direct and proximate result of Defendants’ breach of the implied warranty of
30 merchantability, Plaintiffs and the other Class members received goods whose dangerous and

dysfunctional condition substantially impairs their value to Plaintiffs and the other Class members.

157. Plaintiffs and the other Class members have been damaged as a result of the diminished value of Defendants' products, the products' malfunctioning, and the nonuse of their Class Vehicles.

158. Pursuant to Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiffs and the other Class members are entitled to damages and other legal and equitable relief including, at their election, the purchase price of their Class Vehicles, or the overpayment or diminution in value of their Class Vehicles.

159. Pursuant to Cal. Civ. Code § 1794, Plaintiffs and the other Class members are entitled to costs and attorneys' fees.

Claims Brought on Behalf of the Alabama Class

COUNT X

Breach of Express Warranty (Alabama Code Section 7-2-313)

160. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

161. Plaintiffs bring this Count on behalf of the Alabama Class.

162. Defendants are and were at all relevant times merchants with respect to motor vehicles under Ala. Code § 7-2-104.

163. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicles' Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

1 *Repairs Made at No Charge*

2 Repairs and adjustments covered by these warranties are made at no charge for
3 parts and labor.

4 *Basic Warranty*

5 This warranty covers repairs and adjustments needed to correct defects in materials
6 or workmanship of any part supplied by Toyota. . . . Coverage is for 36 months or
7 36,000 miles, whichever occurs first. . . .

8 2. Ford's warranty

9 *KNOW WHEN YOUR WARRANTY BEGINS*

10 Your Warranty Start Date is the day you take delivery of your new vehicle or the
11 day it is first put into service. . . .

12 *QUICK REFERENCE: WARRANTY COVERAGE*

13 . . .

14 Your Bumper to Bumper Coverage lasts for three years – unless you drive more
15 than 36,000 miles before three years elapse.

16 *WHO PAYS FOR WARRANTY REPAIRS?*

17 You will not be charged for repairs covered by any applicable warranty during the
18 stated coverage periods. . . .

19 3. GM's warranty

20 *Warranty Period*

21 The warranty period for all coverages begins on the date the vehicle is first
22 delivered or put in use and ends at the expiration of the coverage period.

23 *Bumper-to-Bumper Coverage*

24 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes
25 first. . . .

26 *No Charge*

27 Warranty repairs, including towing, parts, and labor, will be made at no charge.

28 *Repairs Covered*

 This warranty covers repairs to correct any vehicle defect related to materials or
workmanship occurring during the warranty period. Needed repairs will be
performed using new or remanufactured parts.

164. Defendants' Limited Warranties, as well as advertisements, brochures, and other
statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
equipped with a CAN bus from Defendants.

1 165. Defendants breached the express warranty to repair and adjust to correct defects
2 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
3 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
4 workmanship defects.

5 166. In addition to these Limited Warranties, Defendants otherwise expressly
6 warranted several attributes, characteristics, and qualities of the CAN bus.

7 167. These warranties are only a sampling of the numerous warranties that Defendants
8 made relating to safety, reliability, and operation. Generally these express warranties promise
9 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
10 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
11 on Defendants' websites, and in uniform statements provided by Defendants to be made by
12 salespeople, or made publicly by Defendants' executives or by other authorized' representatives.
13 These affirmations and promises were part of the basis of the bargain between the parties.

14 168. These additional warranties were also breached because the Class Vehicles were
15 not fully operational, safe, or reliable (and remained so even after the problems were
16 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
17 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
18 conforming to these express warranties.

19 169. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
20 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
21 the other Class members whole and because Defendants have failed and/or have refused to
22 adequately provide the promised remedies within a reasonable time.

23 170. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
24 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
25 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
26 law.

27 171. Also, as alleged in more detail herein, at the time that Defendants warranted and
28 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and

1 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
2 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
3 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
4 pretenses.

5 172. Moreover, many of the injuries flowing from the Class Vehicles cannot be
6 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
7 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
8 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
9 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
10 would be insufficient to make Plaintiffs and the other Class members whole.

11 173. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
12 the other Class members assert as an additional and/or alternative remedy, as set forth in Ala.
13 Code § 7-2- 711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to
14 the other Class members of the purchase price of all Class Vehicles currently owned and for such
15 other incidental and consequential damages as allowed under Ala. Code §§ 7-2-711 and 7-2-608.

16 174. Defendants were provided notice of these issues by the instant Complaint, and by
17 other means before or within a reasonable amount of time after the allegations of Class Vehicle
18 defects became public.

19 175. As a direct and proximate result of Defendants’ breach of express warranties,
20 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

21 **COUNT XI**

22 **Breach of the Implied Warranty of Merchantability**
23 **(Alabama Code Section 7-2-314)**

24 176. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
25 forth herein.

26 177. Plaintiffs bring this Count on behalf of the Alabama Class.

27 178. Defendants are and were at all relevant times merchants with respect to motor
28 vehicles under Ala. Code § 7-2-104.

179. A warranty that the Class Vehicles were in merchantable condition was implied by law in the instant transactions, pursuant to Ala. Code § 7-2-314. These vehicles and the CAN buses in the Class Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which they are used. Specifically, the Class Vehicles are inherently defective in that there are defects in the CAN bus which prevent users from enjoying many features of the Class Vehicles they purchased and/or leased and that they paid for; and the CAN bus was not adequately tested.

180. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, and by other means.

181. As a direct and proximate result of Defendants' breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT XII

Breach of Contract/Common Law Warranty (Based on Alabama Law)

182. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

183. Plaintiffs bring this Count on behalf of the Alabama Class.

184. To the extent Defendants' limited remedies are deemed not to be warranties under Alabama's Commercial Code, Plaintiffs plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the Class to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs. Defendants breached this warranty or contract obligation by failing to repair the defective Class Vehicles, or to replace them.

185. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT XIII

**Fraudulent Concealment
(Based On Alabama Law)**

186. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

187. Plaintiffs bring this Count on behalf of the Alabama Class.

188. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

189. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Class Vehicles it was selling were new, had no significant defects, and would perform and operate properly when driven in normal usage.

190. Defendants knew these representations were false when made.

191. The Class Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and defective CAN buses, as alleged herein.

192. Defendants had a duty to disclose that these Class Vehicles were defective, unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other Class members relied on Defendants' material representations that the Class Vehicles they were purchasing were safe and free from defects.

193. The aforementioned concealment was material because if it had been disclosed Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

194. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants knew or recklessly disregarded that their representations were false because it knew that the CAN

1 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
2 sell Class Vehicles.

3 195. Plaintiffs and the other Class members relied on Defendants' reputation – along
4 with Defendants' failure to disclose the faulty and defective nature of the CAN buses and
5 Defendants' affirmative assurance that their Class Vehicles were safe and reliable, and other
6 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

7 196. As a result of their reliance, Plaintiffs and the other Class members have been
8 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
9 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
10 Class Vehicles.

11 197. Defendants' conduct was knowing, intentional, with malice, demonstrated a
12 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
13 members.

14 198. Plaintiffs and the other Class members are therefore entitled to an award of
15 punitive damages.

16 **COUNT XIV**

17 **Violation of Alabama Deceptive Trade Practices Act**
18 **(Alabama Code Sections 8-19-1, et seq.)**

19 199. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
20 forth herein.

21 200. The conduct of Defendants, as set forth herein, constitutes unfair or deceptive acts
22 or practices, including but not limited to, Defendants' manufacture and sale of vehicles with CAN
23 buses susceptible to hacking, which Defendants failed to adequately investigate, disclose and
24 remedy, and their misrepresentations and omissions regarding the safety and reliability of their
25 vehicles.

26 201. Defendants' actions, as set forth above, occurred in the conduct of trade or
27 commerce.
28

202. Defendants' actions impact the public interest because Plaintiffs were injured in exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a result of Defendants' generalized course of deception. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business.

203. Plaintiffs and the Class were injured as a result of Defendants' conduct. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value.

204. Defendants' conduct proximately caused the injuries to Plaintiffs and the Class.

205. Defendants are liable to Plaintiffs and the Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages.

206. Pursuant to Ala. Code § 8-19-8, Plaintiffs will serve the Alabama Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.

Claims Brought on Behalf of the Alaska Class

COUNT XV

Violation of the Alaska Unfair Trade Practices and Consumer Protection Act (Alaska Statutes Sections 45.50.471, *et seq.*)

207. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

208. The Alaska Unfair Trade Practices And Consumer Protection Act ("AUTPCPA") declares unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce unlawful, including: "(4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have"; "(6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another"; "(8) advertising goods or services with intent not to sell them as advertised"; "(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission

1 in connection with the sale or advertisement of goods or services whether or not a person has in
2 fact been misled, deceived or damaged”; and “(14) representing that an agreement confers or
3 involves rights, remedies, or obligations which it does not confer or involve, or which are
4 prohibited by law.” Alaska Stat. § 45.50.471.

5 209. In the course of Defendants’ business, they willfully failed to disclose and
6 actively concealed the dangerous risk of hacking as described above. Accordingly, Defendants
7 engaged in unlawful trade practices, including representing that the Defective Vehicles have
8 characteristics, uses, benefits, and qualities which they do not have; representing that the
9 Defective Vehicles are of a particular standard and quality when they are not; advertising the
10 Defective Vehicles with the intent not to sell them as advertised; omitting material facts in
11 describing the Defective Vehicles; and representing that their warranties confers or involves
12 rights, remedies, or obligations which it does not confer or involve, or which are prohibited by
13 law.

14 210. Defendants’ misrepresentations and omissions described herein have the capacity
15 or tendency to deceive. As a result of these unlawful trade practices, Plaintiffs have suffered
16 ascertainable loss.

17 211. Plaintiffs and the Class suffered ascertainable loss caused by Defendants’ failure
18 to disclose material information. Plaintiffs and the Class overpaid for their vehicles and did not
19 receive the benefit of their bargain. The value of their vehicles has diminished now that the safety
20 issues have come to light, and Plaintiffs and the Class own vehicles that are not safe.

21 212. Plaintiffs are entitled to recover the greater of three times the actual damages or
22 \$500, pursuant to § 45.50.531(a). Attorneys’ fees may also be awarded to the prevailing party
23 pursuant to § 45.50.531(g).

24 **COUNT XVI**

25 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY** 26 **(Alaska Statutes Section 45.02.314)**

27 213. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
28 forth herein.

214. Defendants are and were at all relevant times merchants with respect to motor vehicles.

215. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions.

216. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. As set forth above in detail, the Defective Vehicles are inherently defective in that the CAN buses are susceptible to hacking.

217. Defendants were provided notice of these issues by numerous means, including the instant complaint, and by numerous communications before or within a reasonable amount of time after the allegations of vehicle defects became public.

218. As a direct and proximate result of Defendants' breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

Claims Brought on Behalf of the Arizona Class

COUNT XVII

Violations of the Consumer Fraud Act (Arizona Revised Statutes Sections 44-1521, et seq.)

219. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

220. Plaintiffs bring this Count on behalf of the Arizona Class.

221. Plaintiffs and Defendants are each "persons" as defined by Ariz. Rev. Stat. § 44-1521(6). The Class Vehicles are "merchandise" as defined by Ariz. Rev. Stat. § 44-1521(5).

222. The Arizona Consumer Fraud Act proscribes "[t]he act, use or employment by any person of any deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby." Ariz. Rev. Stat. § 44-1522(A).

223. By failing to disclose and actively concealing the defects in the Class Vehicles, Defendants engaged in deceptive business practices prohibited by the Arizona Consumer Fraud Act, Ariz. Rev. Stat. § 44-1522(A), including (1) representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Class Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Class Vehicles with the intent not to sell them as advertised, and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to the consumer.

224. As alleged above, Defendants made numerous material statements about the benefits and characteristics of the CAN bus that were either false or misleading. Each of these statements contributed to the deceptive context of Defendants' unlawful advertising and representations as a whole.

225. Defendants knew that the CAN buses in the Class Vehicles were defectively designed or manufactured, would fail without warning, and were not suitable for their intended use. Defendants nevertheless failed to warn Plaintiffs about these defects despite having a duty to do so.

226. Defendants owed Plaintiffs a duty to disclose the defective nature of the CAN buses in the Class Vehicles, because Defendants:

a) Possessed exclusive knowledge of the defects rendering the Class Vehicles more unreliable than similar vehicles;

b) Intentionally concealed the defects through their deceptive marketing campaign that it designed to hide the defects in the CAN bus; and/or

c) Made incomplete representations about the characteristics and performance of the CAN bus generally, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

227. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true performance and characteristics of the CAN bus.

228. As a result of their violations of the Arizona Consumer Fraud Act detailed above, Defendants caused actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs currently own or lease, or within the class period has owned or leased, a Class Vehicle that is defective. Defects associated with the CAN bus have caused the value of Class Vehicles to decrease.

229. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful acts and are, therefore, entitled to damages and other relief as provided under the Arizona Consumer Fraud Act.

230. Plaintiffs also seeks court costs and attorneys' fees as a result of Defendants' violation of the Arizona Consumer Fraud Act as provided in Ariz. Rev. Stat. § 12-341.01.

COUNT XVIII

Breach of Express Warranty (Arizona Revised Statutes Section 47-2313)

231. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

232. Plaintiffs bring this Count on behalf of the Arizona Class.

233. Defendants are and were at all relevant times merchants with respect to motor vehicles under Ariz. Rev. Stat. § 47-2104(A).

234. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that it would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

1 *Basic Warranty*

2 This warranty covers repairs and adjustments needed to correct defects in materials
3 or workmanship of any part supplied by Toyota Coverage is for 36 months or
4 36,000 miles, whichever occurs first. . . .

5 2. Ford's warranty

6 *KNOW WHEN YOUR WARRANTY BEGINS*

7 Your Warranty Start Date is the day you take delivery of your new vehicle or the
8 day it is first put into service. . . .

9 *QUICK REFERENCE: WARRANTY COVERAGE*

10 . . .

11 Your Bumper to Bumper Coverage lasts for three years – unless you drive more
12 than 36,000 miles before three years elapse.

13 *WHO PAYS FOR WARRANTY REPAIRS?*

14 You will not be charged for repairs covered by any applicable warranty during the
15 stated coverage periods. . . .

16 3. GM's warranty

17 *Warranty Period*

18 The warranty period for all coverages begins on the date the vehicle is first
19 delivered or put in use and ends at the expiration of the coverage period.

20 *Bumper-to-Bumper Coverage*

21 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes
22 first. . . .

23 *No Charge*

24 Warranty repairs, including towing, parts, and labor, will be made at no charge.

25 *Repairs Covered*

26 This warranty covers repairs to correct any vehicle defect related to materials or
27 workmanship occurring during the warranty period. Needed repairs will be
28 performed using new or remanufactured parts.

235. Defendants' Limited Warranties, as well as advertisements, brochures, and other
statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
equipped with a CAN bus from Defendants.

236. Defendants breached the express warranty to repair and adjust to correct defects
in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and

1 workmanship defects.

2 237. In addition to these Limited Warranties, Defendants otherwise expressly
3 warranted several attributes, characteristics, and qualities of the CAN bus.

4 238. These warranties are only a sampling of the numerous warranties that Defendants
5 made relating to safety, reliability, and operation. Generally these express warranties promise
6 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
7 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
8 on Defendants' websites, and in uniform statements provided by Defendants to be made by
9 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
10 These affirmations and promises were part of the basis of the bargain between the parties.

11 239. These additional warranties were also breached because the Class Vehicles were
12 not fully operational, safe, or reliable (and remained so even after the problems were
13 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
14 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
15 conforming to these express warranties.

16 240. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
17 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
18 the other Class members whole and because Defendants have failed and/or have refused to
19 adequately provide the promised remedies within a reasonable time.

20 241. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the
21 limited warranty of repair or adjustments to parts defective in materials or workmanship, and
22 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
23 law.

24 242. Also, as alleged in more detail herein, at the time that Defendants warranted and
25 sold the Class Vehicles it knew that the Class Vehicles did not conform to the warranties and
26 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
27 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
28 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent

1 pretenses.

2 243. Moreover, many of the injuries flowing from the Class Vehicles cannot be
3 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
4 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
5 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
6 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
7 would be insufficient to make Plaintiffs and the other Class members whole.

8 244. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
9 the other Class members assert as an additional and/or alternative remedy, as set forth in Ariz.
10 Rev. Stat. § 47-2711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and
11 to the other Class members of the purchase price of all Class Vehicles currently owned and for
12 such other incidental and consequential damages as allowed under Ariz. Rev. Stat. §§ 47-2711
13 and 47-2608.

14 245. Defendants were provided notice of these issues by the instant Complaint, and by
15 other means before or within a reasonable amount of time after the allegations of Class Vehicle
16 defects became public.

17 246. As a direct and proximate result of Defendants’ breach of express warranties,
18 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

19 **COUNT XIX**

20 **Breach of the Implied Warranty of Merchantability** 21 **(Arizona Revised Statutes Section 47-2314)**

22 247. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
23 forth herein.

24 248. Plaintiffs bring this Count on behalf of the Arizona Class.

25 249. Defendants are and were at all relevant times merchants with respect to motor
26 vehicles under Ariz. Rev. Stat. § 47-2014.

27 250. A warranty that the Class Vehicles were in merchantable condition was implied
28 by law in the instant transactions, pursuant to Ariz. Rev. Stat. § 47-2314. These vehicles and the

1 CAN buses in the Class Vehicles, when sold and at all times thereafter, were not in merchantable
2 condition and are not fit for the ordinary purpose for which they are used. Specifically, the Class
3 Vehicles are inherently defective in that there are defects in the CAN buses which prevent users
4 from enjoying many features of the Class Vehicles they purchased and/or leased and that they
5 paid for; and the CAN bus was not adequately tested.

6 251. Defendants were provided notice of these issues by numerous complaints filed
7 against them, including the instant Complaint, and by other means.

8 252. As a direct and proximate result of Defendants' breach of the warranties of
9 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

10 **COUNT XX**

11 **Breach of Contract/Common Law Warranty**
12 **(Based on Arizona Law)**

13 253. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
14 forth herein.

15 254. Plaintiffs bring this Count on behalf of the Arizona Class.

16 255. To the extent Defendants' limited remedies are deemed not to be warranties under
17 the Uniform Commercial Code as adopted in Arizona, Plaintiffs plead in the alternative under
18 common law warranty and contract law. Defendants limited the remedies available to Plaintiffs
19 and the Class to repairs and adjustments needed to correct defects in materials or workmanship of
20 any part supplied by Defendants, and/or warranted the quality or nature of those services to
21 Plaintiffs. Defendants breached this warranty or contract obligation by failing to repair the
22 defective Class Vehicles, or to replace them.

23 256. As a direct and proximate result of Defendants' breach of contract or common
24 law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial,
25 which shall include, but is not limited to, all compensatory damages, incidental and consequential
26 damages, and other damages allowed by law.

COUNT XXI

**Fraudulent Concealment
(Based on Arizona Law)**

257. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

258. Plaintiffs bring this Count on behalf of the Arizona Class.

259. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

260. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Class Vehicles they was selling were new, had no significant defects, and would perform and operate properly when driven in normal usage.

261. Defendants knew these representations were false when made.

262. The Class Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and defective CAN buss, as alleged herein.

263. Defendants had a duty to disclose that these Class Vehicles were defective, unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other Class members relied on Defendants' material representations that the Class Vehicles they were purchasing were safe and free from defects.

264. The aforementioned concealment was material because if it had been disclosed Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

265. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants knew or recklessly disregarded that their representations were false because they knew that the

1 CAN buses were susceptible to hacking. Defendants intentionally made the false statements in
2 order to sell Class Vehicles.

3 266. Plaintiffs and the other Class members relied on Defendants' reputation – along
4 with Defendants' failure to disclose the faulty and defective nature of the CAN buses and
5 Defendants' affirmative assurance that their Class Vehicles were safe and reliable, and other
6 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

7 267. As a result of their reliance, Plaintiffs and the other Class members have been
8 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
9 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
10 Class Vehicles.

11 268. Defendants' conduct was knowing, intentional, with malice, demonstrated a
12 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
13 members.

14 269. Plaintiffs and the other Class members are therefore entitled to an award of
15 punitive damages.

16 **Claims Brought on Behalf of the Arkansas Class**

17 **COUNT XXII**

18 **Breach of Implied Warranty of Merchantability**
19 **(Arkansas Code Annotated Section 4-2-314)**

20 270. Plaintiffs incorporate the allegations set forth above as is fully set forth herein.

21 271. In their manufacture and sale of the Defective Vehicles, Defendants impliedly
22 warranted to Plaintiffs and the Class that their vehicles were in merchantable condition and fit for
23 their ordinary purpose.

24 272. These vehicles, when sold and at all times thereafter, were not in merchantable
25 condition and are not fit for the ordinary purpose for which cars are used. As set forth above in
26 detail, the Defective Vehicles are inherently defective in that the CAN buses are susceptible to
27 hacking.

28

1 in part, with the intent to induce Plaintiffs and the Class to purchase the Defective Vehicles at a
2 higher price for the vehicles, which did not match the vehicles' true value.

3 280. Defendants still have not made full and adequate disclosure and continue to
4 defraud Plaintiffs and the Class.

5 281. Plaintiffs and the Class were unaware of these omitted material facts and would
6 not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs'
7 and the Class' actions were justified. Defendants were in exclusive control of the material facts
8 and such facts were not known to the public or the Class.

9 282. As a result of the misrepresentation concealment and/or suppression of the facts,
10 Plaintiffs and the Class sustained damage. For those Plaintiffs and the Class who elect to affirm
11 the sale, these damages, pursuant to A.C.A. § 4-2-72, include the difference between the actual
12 value of that which Plaintiffs and the Class paid and the actual value of that which they received,
13 together with additional damages arising from the sales transaction, amounts expended in reliance
14 upon the fraud, compensation for loss of use and enjoyment of the property, and/or lost profits.
15 For those Plaintiffs and the Class who want to rescind the purchase, then those Plaintiffs and the
16 Class are entitled to restitution and consequential damages pursuant to A.C.A. § 4-2-72.

17 283. Defendants' acts were done maliciously, oppressively, deliberately, with intent to
18 defraud, and in reckless disregard of Plaintiffs' and the Class' rights and well-being to enrich
19 Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount
20 sufficient to deter such conduct in the future, which amount is to be determined according to
21 proof.

22 **Claims Brought on Behalf of the Colorado Class**

23 **COUNT XXIV**

24 **Violations of the Colorado Consumer Protection Act**
25 **(Colorado Revised Statutes Sections 6-1-101, et seq.)**

26 284. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
27 forth herein.

28 285. Plaintiffs bring this Count on behalf of the Colorado Class.

1 286. Colorado’s Consumer Protection Act (the “CCPA”) prohibits a person from
2 engaging in a “deceptive trade practice,” which includes knowingly making “a false
3 representation as to the source, sponsorship, approval, or certification of goods,” or “a false
4 representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of
5 goods.” Colo. Rev. Stat. § 6-1-105(1)(b), (e). The CCPA further prohibits “represent[ing] that
6 goods ... are of a particular standard, quality, or grade ... if he knows or should know that they
7 are of another,” and “advertis[ing] goods . . . with intent not to sell them as advertised.” Colo.
8 Rev. Stat. § 6-1-105(1)(g),(i).

9 287. Defendants are “persons” within the meaning of Colo. Rev. Stat. § 6-1-102(6).

10 288. In the course of Defendants’ business, they willfully misrepresented and failed to
11 disclose, and actively concealed, the dangerous risk of CAN bus hacking in Class Vehicles as
12 described above. Accordingly, Defendants engaged in unlawful trade practices, including
13 representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do
14 not have; representing that Class Vehicles are of a particular standard and quality when they are
15 not; advertising Class Vehicles with the intent not to sell them as advertised; and otherwise
16 engaging in conduct likely to deceive.

17 289. Defendants’ actions as set forth above occurred in the conduct of trade or
18 commerce.

19 290. Defendants’ conduct proximately caused injuries to Plaintiffs and the other Class
20 members.

21 291. Plaintiffs and the other Class members were injured as a result of Defendants’
22 conduct in that Plaintiffs and the other Class members overpaid for their Class Vehicles and did
23 not receive the benefit of their bargain, and their Class Vehicles have suffered a diminution in
24 value. These injuries are the direct and natural consequence of Defendants’ misrepresentations
25 and omissions.

COUNT XXV**Strict Product Liability
(Based on Colorado Law)**

292. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

293. Plaintiffs bring this Count on behalf of the Colorado Class.

294. Colorado law recognizes an action for product defects that complements Colorado's Product Liability Statute, Colo. Rev. Stat. Title 13, Article 21, Part 4.

295. Defendants are "manufacturers" and "sellers" of the Class Vehicles within the meaning of Colo. Rev. Stat. § 13-21-401(1).

296. Defendants manufactured and sold the Class Vehicles in a defective condition and in a condition that was unreasonably dangerous to drivers, other motorists, pedestrians, and others or to their property, including persons who may reasonably be expected to use, consume, or be affected by them, in at least the following respects: (i) the Class Vehicles were defectively designed, assembled, fabricated, produced, and constructed in that they were susceptible to hacking and dysfunction of crucial safety functions; and (ii) the Class Vehicles were not accompanied by adequate warnings about their defective nature.

297. The Class Vehicles were defective and unreasonably dangerous at the time they were sold by Defendants and were intended to and did reach Plaintiffs and the other Class Members in substantially the same condition as they were in when they were manufactured, sold, and left the control of Defendants.

298. Plaintiffs and the other Class members are persons who were reasonably expected to use, consume, or be affected by the Class Vehicles.

299. As a direct and proximate result of the defective and unreasonably dangerous conditions of the Class Vehicles, Plaintiffs and the other Class members have suffered damages.

COUNT XXVI**Breach of Express Warranty
(Colorado Revised Statutes Sections 4-2-313)**

300. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

301. Plaintiffs bring this Count on behalf of the Colorado Class.

302. Defendants are and were at all relevant times merchants with respect to motor vehicles.

303. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicles' Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

1 You will not be charged for repairs covered by any applicable warranty during the
2 stated coverage periods

3 3. GM's warranty

4 *Warranty Period*

5 The warranty period for all coverages begins on the date the vehicle is first
6 delivered or put in use and ends at the expiration of the coverage period.

7 *Bumper-to-Bumper Coverage*

8 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
9

10 *No Charge*

11 Warranty repairs, including towing, parts, and labor, will be made at no charge.

12 *Repairs Covered*

13 This warranty covers repairs to correct any vehicle defect related to materials or
14 workmanship occurring during the warranty period. Needed repairs will be
15 performed using new or remanufactured parts.

16 304. Defendants' Limited Warranties, as well as advertisements, brochures, and other
17 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
18 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
19 equipped with a CAN bus from Defendants.

20 305. Defendants breached the express warranty to repair and adjust to correct defects
21 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
22 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
23 workmanship defects.

24 306. In addition to these Limited Warranties, Defendants otherwise expressly
25 warranted several attributes, characteristics, and qualities of the CAN bus.

26 307. These warranties are only a sampling of the numerous warranties that Defendants
27 made relating to safety, reliability, and operation. Generally these express warranties promise
28 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
on Defendants' websites, and in uniform statements provided by Defendants to be made by
salespeople, or made publicly by Defendants' executives or by other authorized representatives.

1 These affirmations and promises were part of the basis of the bargain between the parties.

2 308. These additional warranties were also breached because the Class Vehicles were
3 not fully operational, safe, or reliable (and remained so even after the problems were
4 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
5 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
6 conforming to these express warranties.

7 309. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
8 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
9 the other Class members whole and because Defendants have failed and/or have refused to
10 adequately provide the promised remedies within a reasonable time.

11 310. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
12 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
13 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
14 law.

15 311. Also, as alleged in more detail herein, at the time that Defendants warranted and
16 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
17 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
18 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
19 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
20 pretenses.

21 312. Moreover, many of the injuries flowing from the Class Vehicles cannot be
22 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
23 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
24 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
25 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
26 would be insufficient to make Plaintiffs and the other Class members whole.

27 313. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
28 the other Class members assert as an additional and/or alternative remedy, as set forth in Colo.

1 Rev. Stat. § 4-2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and
2 to the other Class members of the purchase price of all Class Vehicles currently owned for such
3 other incidental and consequential damages as allowed under Colo. Rev. Stat. §§ 4-2-711 and 4-2-
4 608.

5 314. Defendants were provided notice of these issues by the instant Complaint, and by
6 other means before or within a reasonable amount of time after the allegations of Class Vehicle
7 defects became public.

8 315. As a direct and proximate result of Defendants' breach of express warranties,
9 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

10 **COUNT XXVII**

11 **Breach of Implied Warranty of Merchantability**
12 **(Colorado Revised Statutes Sections 4-2-314)**

13 316. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
14 forth herein.

15 317. Plaintiffs bring this Count on behalf of the Colorado Class.

16 318. Defendants are and were at all relevant times merchants with respect to motor
17 vehicles.

18 319. A warranty that the Class Vehicles were in merchantable condition is implied by
19 law in the instant transactions.

20 320. These Class Vehicles, when sold and at all times thereafter, were not in
21 merchantable condition and are not fit for the ordinary purpose for which cars are used.
22 Defendants were provided notice of these issues by numerous complaints filed against them,
23 including the instant Complaint, and by other means.

24 321. As a direct and proximate result of Defendants' breach of the warranties of
25 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT XXVIII

**Breach of Contract/Common Law Warranty
(Based on Colorado Law)**

322. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

323. Plaintiffs bring this Count on behalf of the Colorado Class.

324. To the extent Defendants' limited remedies are deemed not to be warranties under Colorado's Commercial Code, Plaintiffs, individually and on behalf of the other Class members, plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other Class members.

325. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles evidencing a faulty and defective CAN bus, or to replace them.

326. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT XXIX

**Fraudulent Concealment
(Based on Colorado Law)**

327. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

328. Plaintiffs bring this Count on behalf of the Colorado Class.

329. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

330. Defendants further affirmatively misrepresented to Plaintiffs in advertising and

1 other forms of communication, including standard and uniform material provided with each car,
2 that the Class Vehicles they was selling were new, had no significant defects, and would perform
3 and operate properly when driven in normal usage.

4 331. Defendants knew these representations were false when made.

5 332. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
6 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
7 defective CAN buses, as alleged herein.

8 333. Defendants had a duty to disclose that these Class Vehicles were defective,
9 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
10 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
11 Class members relied on Defendants' material representations that the Class Vehicles they were
12 purchasing were safe and free from defects.

13 334. The aforementioned concealment was material because if it had been disclosed
14 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
15 would not have bought or leased those Vehicles at the prices they paid.

16 335. The aforementioned representations were material because they were facts that
17 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
18 knew or recklessly disregarded that their representations were false because they knew the CAN
19 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
20 sell Class Vehicles.

21 336. Plaintiffs and the other Class members relied on Defendants' reputations – along
22 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
23 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
24 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

25 337. As a result of their reliance, Plaintiffs and the other Class members have been
26 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
27 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
28 Class Vehicles.

338. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

339. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Connecticut Class

COUNT XXX

Violations of the Unfair Trade Practices Act

(Connecticut General Statutes Annotated Sections 42-110A, *et seq.*)

340. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

341. Plaintiffs bring this Count on behalf of the Connecticut Class.

342. Plaintiffs and Defendants are each "persons" as defined by Conn. Gen. Stat. Ann. § 42-110a(3).

343. The Connecticut Unfair Trade Practices Act ("CUTPA") provides that "[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Conn. Gen. Stat. Ann. § 42-110b(a). The CUTPA further provides a private right of action under Conn. Gen. Stat. Ann. § 42-110g(a).

344. By failing to disclose and actively concealing the defects in the Class Vehicles, Defendants engaged in deceptive business practices prohibited by the CUTPA, including (1) representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Class Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Class Vehicles with the intent not to sell them as advertised, and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to the consumer.

345. As alleged above, Defendants made numerous material statements about the benefits and characteristics of the Class Vehicles that were either false or misleading. Each of these statements contributed to the deceptive context of Defendants' unlawful advertising and

1 representations as a whole.

2 346. Defendants knew that the CAN buses in the Class Vehicles were defectively
3 designed or manufactured, were susceptible to hacking, and were not suitable for their intended
4 use. Defendants nevertheless failed to warn Plaintiffs about these defects despite having a duty to
5 do so.

6 347. Defendants owed Plaintiffs a duty to disclose the defective nature of the CAN
7 buses in the Class Vehicles, because Defendants:

8 a) Possessed exclusive knowledge of the defects rendering the Class
9 Vehicles more unreliable than similar vehicles;

10 b) Intentionally concealed the defects associated with the CAN buses through
11 their deceptive marketing campaign that they designed to hide the defects; and/or

12 c) Made incomplete representations about the characteristics and
13 performance of the Class Vehicles generally, while purposefully withholding material facts from
14 Plaintiffs that contradicted these representations.

15 348. Defendants' unfair or deceptive acts or practices were likely to and did in fact
16 deceive reasonable consumers, including Plaintiffs, about the true performance and characteristics
17 of the Class Vehicles.

18 349. As a result of their violations of the CUTPA detailed above, Defendants caused
19 actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs
20 currently own or lease, or within the class period have owned or leased, a Class Vehicle that is
21 defective. Defects associated with the CAN bus have caused the value of Class Vehicles to
22 decrease.

23 350. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful
24 acts and are, therefore, entitled to damages and other relief as provided under the CUTPA.

25 351. Plaintiffs also seeks court costs and attorneys' fees as a result of Defendants'
26 violation of the CUTPA as provided in Conn. Gen. Stat. Ann. § 42-110g(d). A copy of this
27 Complaint has been mailed to the Attorney General and the Commissioner of Consumer
28 Protection of the State of Connecticut in accordance with Conn. Gen. Stat. Ann. § 42-110g(c).

COUNT XXXI**Breach of Express Warranty****(Connecticut General Statutes Annotated Section 42A-2-313)**

352. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

353. Plaintiffs bring this Count on behalf of the Connecticut Class.

354. Defendants are and were at all relevant times merchants with respect to motor vehicles under Conn. Gen. Stat. Ann. § 42a-2-104(1).

355. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

1 You will not be charged for repairs covered by any applicable warranty during the
2 stated coverage periods

3 3. GM's warranty

4 *Warranty Period*

5 The warranty period for all coverages begins on the date the vehicle is first
6 delivered or put in use and ends at the expiration of the coverage period.

7 *Bumper-to-Bumper Coverage*

8 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
9

10 *No Charge*

11 Warranty repairs, including towing, parts, and labor, will be made at no charge.

12 *Repairs Covered*

13 This warranty covers repairs to correct any vehicle defect related to materials or
14 workmanship occurring during the warranty period. Needed repairs will be
15 performed using new or remanufactured parts.

16 356. Defendants' Limited Warranties, as well as advertisements, brochures, and other
17 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
18 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
19 equipped with a CAN bus from Defendants.

20 357. Defendants breached the express warranty to repair and adjust to correct defects
21 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
22 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
23 workmanship defects.

24 358. In addition to these Limited Warranties, Defendants otherwise expressly
25 warranted several attributes, characteristics, and qualities of the CAN bus.

26 359. These warranties are only a sampling of the numerous warranties that Defendants
27 made relating to safety, reliability, and operation. Generally these express warranties promise
28 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
on Defendants' websites, and in uniform statements provided by Defendants to be made by
salespeople, or made publicly by Defendants' executives or by other authorized representatives.

1 These affirmations and promises were part of the basis of the bargain between the parties.

2 360. These additional warranties were also breached because the Class Vehicles were
3 not fully operational, safe, or reliable (and remained so even after the problems were
4 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
5 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
6 conforming to these express warranties.

7 361. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
8 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
9 the other Class members whole and because Defendants have failed and/or have refused to
10 adequately provide the promised remedies within a reasonable time.

11 362. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
12 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
13 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
14 law.

15 363. Also, as alleged in more detail herein, at the time that Defendants warranted and
16 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
17 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
18 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
19 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
20 pretenses.

21 364. Moreover, many of the injuries flowing from the Class Vehicles cannot be
22 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
23 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
24 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
25 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
26 would be insufficient to make Plaintiffs and the other Class members whole.

27 365. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
28 the other Class members assert as an additional and/or alternative remedy, as set forth in Conn.

1 Gen. Stat. Ann. § 42a-2-711, for a revocation of acceptance of the goods, and for a return to
 2 Plaintiffs and to the other Class members of the purchase price of all Class Vehicles currently
 3 owned and for such other incidental and consequential damages as allowed under Conn. Gen.
 4 Stat. Ann. §§ 42a-2-711 and 42a-2-608.

5 366. Defendants were provided notice of these issues by the instant Complaint, and by
 6 other means before or within a reasonable amount of time after the allegations of Class Vehicle
 7 defects became public.

8 367. As a direct and proximate result of Defendants' breach of express warranties,
 9 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

10 **COUNT XXXII**

11 **Breach of the Implied Warranty of Merchantability** 12 **(Connecticut General Statutes Annotated Section 42A-2-314)**

13 368. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 14 forth herein.

15 369. Plaintiffs bring this Count on behalf of the Connecticut Class.

16 370. Defendants are and were at all relevant times merchants with respect to motor
 17 vehicles under Conn. Gen. Stat. Ann. § 42a-2-104(1).

18 371. A warranty that the Class Vehicles were in merchantable condition was implied
 19 by law in the instant transactions, pursuant to Conn. Gen. Stat. Ann. § 42a-2-314. These vehicles
 20 and the CAN buses in the Class Vehicles, when sold and at all times thereafter, were not in
 21 merchantable condition and are not fit for the ordinary purpose for which they are used.
 22 Specifically, the Class Vehicles are inherently defective in that there are defects in the CAN buses
 23 which prevent users from enjoying many features of the Class Vehicles they purchased and/or
 24 leased and that they paid for; and the CAN bus was not adequately tested.

25 372. Defendants were provided notice of these issues by numerous complaints filed
 26 against them, including the instant Complaint, and by other means.

27 373. As a direct and proximate result of Defendants' breach of the warranties of
 28 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT XXXIII

**Breach of Contract/Common Law Warranty
(Based on Connecticut Law)**

374. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

375. Plaintiffs bring this Count on behalf of the Connecticut Class.

376. To the extent Defendants' limited remedies are deemed not to be warranties under the Uniform Commercial Code as adopted in Connecticut, Plaintiffs plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the Class to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs. Defendants breached this warranty or contract obligation by failing to repair the defective Class Vehicles, or to replace them.

377. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT XIV

**Fraudulent Concealment
(Based on Connecticut Law)**

378. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

379. Plaintiffs bring this Count on behalf of the Connecticut Class.

380. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

381. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car,

1 that the Class Vehicles they were selling were new, had no significant defects, and would perform
2 and operate properly when driven in normal usage.

3 382. Defendants knew these representations were false when made.

4 383. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
5 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
6 defective CAN buses, as alleged herein.

7 384. Defendants had a duty to disclose that these Class Vehicles were defective,
8 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
9 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
10 Class members relied on Defendants' material representations that the Class Vehicles they were
11 purchasing were safe and free from defects.

12 385. The aforementioned concealment was material because if it had been disclosed
13 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
14 would not have bought or leased those Vehicles at the prices they paid.

15 386. The aforementioned representations were material because they were facts that
16 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
17 knew or recklessly disregarded that their representations were false because they knew that the
18 CAN buses were susceptible to hacking. Defendants intentionally made the false statements in
19 order to sell Class Vehicles.

20 387. Plaintiffs and the other Class members relied on Defendants' reputation – along
21 with Defendants' failure to disclose the faulty and defective nature of the CAN buses and
22 Defendants' affirmative assurance that their Class Vehicles were safe and reliable, and other
23 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

24 388. As a result of their reliance, Plaintiffs and the other Class members have been
25 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
26 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
27 Class Vehicles.

28 389. Defendants' conduct was knowing, intentional, with malice, demonstrated a

1 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
2 members.

3 390. Plaintiffs and the other Class members are therefore entitled to an award of
4 punitive damages.

5 **Claims Brought on Behalf of the Delaware Class**

6 **COUNT XXXV**

7 **Violation of the Delaware Consumer Fraud Act**

8 **(6 Delaware Code Sections 2513, *et seq.*)**

9 391. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 392. The Delaware Consumer Fraud Act (“CFA”) prohibits the “act, use or
12 employment by any person of any deception, fraud, false pretense, false promise,
13 misrepresentation, or the concealment, suppression, or omission of any material fact with intent
14 that others rely upon such concealment, suppression or omission, in connection with the sale,
15 lease or advertisement of any merchandise, whether or not any person has in fact been misled,
16 deceived or damaged thereby.” 6 Del. Code § 2513(a).

17 393. Defendants are persons with the meaning of 6 Del. Code § 2511(7).

18 394. As described herein Defendants made false representations regarding the safety
19 and reliability of their vehicles and concealed important facts regarding the susceptibility of their
20 vehicles to hacking. Defendants intended that others rely on these misrepresentations and
21 omissions in connection with the sale and lease of their vehicles.

22 395. Defendants’ actions as set forth above occurred in the conduct of trade or
23 commerce.

24 396. Defendants’ conduct proximately caused injuries to Plaintiffs and the Class.

25 397. Plaintiffs and the Class were injured as a result of Defendants’ conduct in that
26 Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain,
27 and their vehicles have suffered a diminution in value. These injuries are the direct and natural
28 consequence of Defendants’ misrepresentations and omissions.

398. Plaintiffs are entitled to recover damages, as well as punitive damages for Defendants' gross and aggravated misconduct.

COUNT XXXVI

Violation of the Delaware Deceptive Trade Practices Act (6 Delaware Code Sections 2532, *et seq.*)

399. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

400. Delaware's Deceptive Trade Practices Act ("DTPA") prohibits a person from engaging in a "deceptive trade practice," which includes: "(5) Represent[ing] that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have"; "(7) Represent[ing] that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another"; "(9) Advertis[ing] goods or services with intent not to sell them as advertised"; or "(12) Engag[ing] in any other conduct which similarly creates a likelihood of confusion or of misunderstanding."

401. Defendants are persons with the meaning of 6 Del. Code § 2531(5).

402. In the course of Defendants' business, they willfully failed to disclose and actively concealed the dangerous risk of the Defective Vehicles being hacked as described above. Accordingly, Defendants engaged in unlawful trade practices, including representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Defective Vehicles are of a particular standard and quality when they are not; advertising Defective Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

403. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

404. Defendants' conduct proximately caused injuries to Plaintiffs and the Class.

405. Plaintiffs and the Class were injured as a result of Defendants' conduct in that

1 Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain,
2 and their vehicles have suffered a diminution in value. These injuries are the direct and natural
3 consequence of Defendants' misrepresentations and omissions.

4 406. Plaintiffs seek injunctive relief and, if awarded damages under Delaware common
5 law or Delaware Consumer Fraud Act, treble damages pursuant to 6 Del. Code § 2533(c).

6 407. Plaintiffs also seek punitive damages based on the outrageousness and
7 recklessness of Defendants' conduct and their high net worth.

8 **COUNT XXXVII**

9 **Breach of Express Warranty**
10 **(6 Delaware Code Section 2-313)**

11 408. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 409. Defendants are and were at all relevant times merchants with respect to motor
14 vehicles.

15 410. In the course of selling their vehicles, Defendants expressly warranted in writing
16 that the Vehicles were covered by a Basic Warranty.

17 411. Defendants breached the express warranty to repair and adjust to correct defects
18 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
19 or adjusted, and have been unable to repair or adjust, the Vehicles' materials and workmanship
20 defects.

21 412. In addition to this Basic Warranty, Defendants expressly warranted several
22 attributes, characteristics and qualities. These affirmations and promises were part of the basis of
23 the bargain between the parties.

24 413. These additional warranties were also breached because the Defective Vehicles
25 were not fully operational, safe, or reliable, nor did they comply with the warranties expressly
26 made to purchasers or lessees. Defendants did not provide at the time of sale, and have not
27 provided since then, vehicles conforming to these express warranties.

28 414. Furthermore, the limited warranty of repair and/or adjustments to defective parts

1 fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiffs
2 and the Class whole and because the Defendants have failed and/or have refused to adequately
3 provide the promised remedies within a reasonable time.

4 415. Accordingly, recovery by the Plaintiffs is not limited to the limited warranty of
5 repair or adjustments to parts defective in materials or workmanship, and Plaintiffs seek all
6 remedies as allowed by law.

7 416. Also, as alleged in more detail herein, at the time that Defendants warranted and
8 sold the vehicles they knew that the vehicles did not conform to the warranties and were
9 inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
10 concealed material facts regarding their vehicles. Plaintiffs and the Class were therefore induced
11 to purchase the vehicles under false and/or fraudulent pretenses.

12 417. Moreover, many of the damages flowing from the Defective Vehicles cannot be
13 resolved through the limited remedy of “replacement or adjustments,” as those incidental and
14 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
15 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
16 within a reasonable time, and any limitation on Plaintiffs’ and the Class’ remedies would be
17 insufficient to make Plaintiffs and the Class whole.

18 418. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
19 and the Class assert as an additional and/or alternative remedy, as set forth in 6 Del. Code. § 2-
20 608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of
21 the purchase price of all vehicles currently owned.

22 419. Defendants were provided notice of these issues by the instant Complaint, and by
23 other means before or within a reasonable amount of time after the allegations of Class Vehicle
24 defects became public.

25 420. As a direct and proximate result of Defendants’ breach of express warranties,
26 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.
27
28

COUNT XXXVIII

**Breach of the Implied Warranty of Merchantability
(6 Delaware Code Section 2-314)**

421. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

422. Defendants are and were at all relevant times merchants with respect to motor vehicles.

423. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions.

424. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. As set forth above in detail, the Defective Vehicles are inherently defective in that the CAN buses are susceptible to hacking.

425. Defendants were provided notice of these issues by numerous means, including the instant complaint, and by numerous communications before or within a reasonable amount of time after the allegations of vehicle defects became public.

426. As a direct and proximate result of Defendants' breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT XXXIX

**Breach of Contract/Common Law Warranty
(Based on Delaware Law)**

427. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

428. To the extent Defendants' repair or adjust commitment is deemed not to be a warranty under Delaware's Commercial Code, Plaintiffs plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the Class to just repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs.

429. Defendants breached this warranty or contract obligation by failing to repair the Defective Vehicles, or to replace them.

430. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

Claims Brought on Behalf of the District of Columbia Class

COUNT XL

Violation of the Consumer Protection Procedures Act (District of Columbia Code Sections 28-3901, *et seq.*)

431. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

432. Defendants are "persons" under D.C. Code § 28-3901(a)(1).

433. Plaintiffs are "consumers," as defined by D.C. Code § 28-3901(1)(2), who purchased or leased one or more Defective Vehicles.

434. Defendants all participated in unfair or deceptive acts or practices that violated the Consumer Protection Procedures Act ("CPPA"), D.C. Code §§ 28-3901, *et seq.*, as described above and below. Defendants each are directly liable for these violations of law. TMC also is liable for TMS's violations of the CPPA because TMS acts as TMC's general agent in the United States for purposes of sales and marketing.

435. By failing to disclose and actively concealing the dangerous risk of hacking in Defective Vehicles equipped with CAN buses, Defendants engaged in unfair or deceptive practices prohibited by the CPPA, D.C. Code § 28-3901, *et seq.*, including (1) representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Defective Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Defective Vehicles with the intent not to sell them as advertised, (4) representing that a transaction involving Defective Vehicles confers or involves rights, remedies, and obligations which it does not, and (5) representing that the subject of a transaction

1 involving Defective Vehicles has been supplied in accordance with a previous representation
2 when it has not.

3 436. Defendants' actions as set forth above occurred in the conduct of trade or
4 commerce.

5 437. Defendants' actions affect the public interest because Plaintiffs were injured in
6 exactly the same way as millions of others purchasing and/or leasing Defendants' vehicles as a
7 result of Defendants' generalized course of deception. All of the wrongful conduct alleged herein
8 occurred, and continues to occur, in the conduct of Defendants' business.

9 438. Plaintiffs and the Class suffered ascertainable loss as a result of Defendants'
10 conduct. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their
11 bargain, and their vehicles have suffered a diminution in value.

12 439. Defendants' conduct proximately caused the injuries to Plaintiffs and the Class.

13 440. Defendants are liable to Plaintiffs and the Class for damages in amounts to be
14 proven at trial, including attorneys' fees, costs, and treble damages.

15 441. Plaintiffs further allege that Defendants are liable for punitive damages under the
16 CPPA as Defendants acted with a state of mind evincing malice or their equivalent.

17 **COUNT XLI**

18 **BREACH OF EXPRESS WARRANTY** 19 **(District of Columbia Code Section 28:2-313)**

20 442. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
21 forth herein.

22 443. Defendants are and were at all relevant times a seller with respect to motor
23 vehicles.

24 444. In the course of selling their vehicles, Defendants expressly warranted in writing
25 that the Vehicles were covered by a Basic Warranty.

26 445. Defendants breached the express warranty to repair and adjust to correct defects in
27 materials and workmanship of any part supplied by Defendants. Defendants have not repaired or
28 adjusted, and have been unable to repair or adjust, the Vehicles' materials and workmanship defects.

1 446. In addition to this Basic Warranty, Defendants expressly warranted several
2 attributes, characteristics and qualities. These affirmations and promises were part of the basis of
3 the bargain between the parties.

4 447. These additional warranties were also breached because the Defective Vehicles
5 were not fully operational, safe, or reliable, nor did they comply with the warranties expressly
6 made to purchasers or lessees. Defendants did not provide at the time of sale, and have not
7 provided since then, vehicles conforming to these express warranties.

8 448. Furthermore, the limited warranty of repair and/or adjustments to defective parts
9 fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiffs
10 and the Class whole and because the Defendants have failed and/or have refused to adequately
11 provide the promised remedies within a reasonable time.

12 449. Accordingly, recovery by the Plaintiffs is not limited to the limited warranty of
13 repair or adjustments to parts defective in materials or workmanship, and Plaintiffs seek all
14 remedies as allowed by law.

15 450. Also, as alleged in more detail herein, at the time that Defendants warranted and
16 sold the vehicles they knew that the vehicles did not conform to the warranties and were
17 inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
18 concealed material facts regarding their vehicles. Plaintiffs and the Class were therefore induced
19 to purchase the vehicles under false and/or fraudulent pretenses.

20 451. Moreover, many of the damages flowing from the Defective Vehicles cannot be
21 resolved through the limited remedy of “replacement or adjustments,” as those incidental and
22 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
23 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
24 within a reasonable time, and any limitation on Plaintiffs’ and the Class’ remedies would be
25 insufficient to make Plaintiffs and the Class whole.

26 452. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
27 and the Class assert as an additional and/or alternative remedy, as set forth in D.C. Code § 28:2-
28 608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of

1 the purchase price of all vehicles currently owned.

2 453. Defendants were provided notice of these issues by numerous complaints filed
3 against them, including the instant complaint, before or within a reasonable amount of time after
4 the allegations of vehicle defects became public.

5 454. As a direct and proximate result of Defendants' breach of express warranties,
6 Plaintiffs and the Class have been damaged in an amount to be determined at trial.

7 **COUNT XLII**

8 **Breach of the Implied Warranty of Merchantability**
9 **(District of Columbia Code Section 28:2-314)**

10 455. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
11 forth herein.

12 456. Defendants are and were at all relevant times merchants with respect to motor
13 vehicles.

14 457. A warranty that the Defective Vehicles were in merchantable condition is implied
15 by law in the instant transactions.

16 458. These vehicles, when sold and at all times thereafter, were not in merchantable
17 condition and are not fit for the ordinary purpose for which cars are used. As set forth above in
18 detail, the Defective Vehicles are inherently defective in that the CAN buses are susceptible to
19 hacking.

20 459. Defendants were provided notice of these issues by numerous means, including
21 the instant complaint, and by numerous communications before or within a reasonable amount of
22 time after the allegations of vehicle defects became public.

23 460. As a direct and proximate result of Defendants' breach of the warranties of
24 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

25 **COUNT XLIII**

26 **Breach of Contract/Common Law Warranty**
27 **(Based on District of Columbia Law)**

28 461. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set

1 forth herein.

2 462. To the extent Defendants' repair or adjust commitment is deemed not to be a
3 warranty under the District of Columbia's Commercial Code, Plaintiffs plead in the alternative
4 under common law warranty and contract law. Defendants limited the remedies available to
5 Plaintiffs and the Class to just repairs and adjustments needed to correct defects in materials or
6 workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those
7 services to Plaintiffs.

8 463. Defendants breached this warranty or contract obligation by failing to repair the
9 Defective Vehicles, or to replace them.

10 464. As a direct and proximate result of Defendants' breach of contract or common
11 law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial,
12 which shall include, but is not limited to, all compensatory damages, incidental and consequential
13 damages, and other damages allowed by law.

14 **Claims Brought on Behalf of the Florida Class**

15 **COUNT XLIV**

16 **Violations of the Florida Deceptive & Unfair Trade Practices Act**
17 **(Florida Statutes Sections 501.201, *et seq.*)**

18 465. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
19 forth herein.

20 466. Plaintiffs bring this Count on behalf of the Florida Class.

21 467. Florida's Deceptive and Unfair Trade Practices Act prohibits "[u]nfair methods of
22 competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the
23 conduct of any trade or commerce." Fla. Stat. § 501.204(1).

24 468. In the course of Defendants' business, they willfully failed to disclose and
25 actively concealed the dangerous risk of CAN bus hacking in Class Vehicles as described above.
26 Accordingly, Defendants engaged in unfair methods of competition, unconscionable acts or
27 practices, and unfair or deceptive acts or practices as defined in Fla. Stat. § 501.204(1), including
28 representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do

1 not have; representing that Class Vehicles are of a particular standard and quality when they are
 2 not; advertising Class Vehicles with the intent not to sell them as advertised; and otherwise
 3 engaging in conduct likely to deceive.

4 469. Defendants' actions as set forth above occurred in the conduct of trade or
 5 commerce.

6 470. Defendants' conduct proximately caused injuries to Plaintiffs and the other Class
 7 members.

8 471. Plaintiffs and the other Class members were injured as a result of Defendants'
 9 conduct in that Plaintiffs and the other Class members overpaid for their Class Vehicles and did
 10 not receive the benefit of their bargain, and their Class Vehicles have suffered a diminution in
 11 value. These injuries are the direct and natural consequence of Defendants' misrepresentations
 12 and omissions.

13 **COUNT XLV**

14 **Breach of Express Warranty** 15 **(Florida Statutes Section 672.313)**

16 472. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 17 forth herein.

18 473. Plaintiffs bring this Count on behalf of the Florida Class.

19 474. Defendants are and were at all relevant times merchants with respect to motor
 20 vehicles.

21 475. In their Limited Warranties and in advertisements, brochures, and through other
 22 statements in the media, Defendants expressly warranted that they would repair or replace defects
 23 in material or workmanship free of charge if they became apparent during the warranty period.

24 For example, the following language appears in all Class Vehicle Warranty booklets:

25 1. Toyota's warranty

26 *When Warranty Begins*

27 The warranty period begins on the vehicle's in-service date, which is the first date
 28 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
 company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

476. Defendants' Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

1 477. Defendants breached the express warranty to repair and adjust to correct defects
2 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
3 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
4 workmanship defects.

5 478. In addition to these Limited Warranties, Defendants otherwise expressly
6 warranted several attributes, characteristics, and qualities of the CAN bus.

7 479. These warranties are only a sampling of the numerous warranties that Defendants
8 made relating to safety, reliability, and operation. Generally these express warranties promise
9 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
10 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
11 on Defendants' websites, and in uniform statements provided by Defendants to be made by
12 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
13 These affirmations and promises were part of the basis of the bargain between the parties.

14 480. These additional warranties were also breached because the Class Vehicles were
15 not fully operational, safe, or reliable (and remained so even after the problems were
16 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
17 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
18 conforming to these express warranties.

19 481. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
20 fails in its essential purpose because the contractual remedy is insufficient to make s and the other
21 Class members whole and because Defendants have failed and/or have refused to adequately
22 provide the promised remedies within a reasonable time.

23 482. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
24 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
25 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
26 law.

27 483. Also, as alleged in more detail herein, at the time that Defendants warranted and
28 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and

1 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
2 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
3 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
4 pretenses.

5 484. Moreover, many of the injuries flowing from the Class Vehicles cannot be
6 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
7 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
8 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
9 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
10 would be insufficient to make Plaintiffs and the other Class members whole.

11 485. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
12 the other Class members assert as an additional and/or alternative remedy, as set forth in Fla. Stat.
13 § 672.608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the
14 other Class members of the purchase price of all Class Vehicles currently owned for such other
15 incidental and consequential damages as allowed under Fla. Stat. §§ 672.711 and 672.608.

16 486. Defendants were provided notice of these issues by the instant Complaint, and by
17 other means before or within a reasonable amount of time after the allegations of Class Vehicle
18 defects became public.

19 487. As a direct and proximate result of Defendants’ breach of express warranties,
20 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

21 **COUNT XLVI**

22 **Breach of Implied Warranty of Merchantability** 23 **(Florida Statutes Section 672.314)**

24 488. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
25 forth herein.

26 489. Plaintiffs bring this Count on behalf of the Florida Class.

27 490. Defendants are and were at all relevant times merchants with respect to motor
28 vehicles.

1 491. A warranty that the Class Vehicles were in merchantable condition is implied by
2 law in the instant transactions.

3 492. These Class Vehicles, when sold and at all times thereafter, were not in
4 merchantable condition and are not fit for the ordinary purpose for which cars are used.
5 Defendants were provided notice of these issues by numerous complaints filed against them,
6 including the instant Complaint, and by other means.

7 493. As a direct and proximate result of Defendants' breach of the warranties of
8 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

9 **COUNT XLVII**

10 **Breach of Contract/Common Law Warranty**
11 **(Based on Florida Law)**

12 494. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
13 forth herein.

14 495. Plaintiffs bring this Count on behalf of the Florida Class.

15 496. To the extent Defendants' limited remedies are deemed not to be warranties under
16 Florida's Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
17 plead in the alternative under common law warranty and contract law. Defendants limited the
18 remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to
19 correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted
20 the quality or nature of those services to Plaintiffs and the other Class members.

21 497. Defendants breached this warranty or contract obligation by failing to repair the
22 Class Vehicles, or to replace them.

23 498. As a direct and proximate result of Defendants' breach of contract or common
24 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
25 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
26 and consequential damages, and other damages allowed by law.

COUNT XLVIII

**Fraudulent Concealment
(Based on Florida Law)**

499. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

500. Plaintiffs bring this Count on behalf of the Florida Class.

501. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

502. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Class Vehicles they was selling were new, had no significant defects, and would perform and operate properly when driven in normal usage.

503. Defendants knew these representations were false when made.

504. The Class Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and defective CAN buses, as alleged herein.

505. Defendants had a duty to disclose that these Class Vehicles were defective, unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other Class members relied on Defendants' material representations that the Class Vehicles they were purchasing were safe and free from defects.

506. The aforementioned concealment was material because if it had been disclosed Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

507. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants knew or recklessly disregarded that their representations were false because they knew the CAN

buses were susceptible to hacking. Defendants intentionally made the false statements in order to sell Class Vehicles.

508. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

509. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

510. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

511. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Georgia Class

COUNT XLIX

Violation of Georgia's Uniform Deceptive Trade Practices Act (Georgia Code Annotated Sections 10-1-370, *et seq.*)

512. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

513. The conduct of Defendants as set forth herein constitutes unfair or deceptive acts or practices, including, but not limited to Defendants' manufacture and sale of vehicles with CAN buses susceptible to hacking, which Defendants failed to adequately investigate, disclose and remedy, and their misrepresentations and omissions regarding the safety and reliability of their vehicles.

514. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

515. Defendants' actions impact the public interest because Plaintiffs were injured in exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a result of Defendants' generalized course of deception. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business.

516. Plaintiffs and the Class were injured as a result of Defendants' conduct.

517. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value.

518. Defendants' conduct proximately caused the injuries to Plaintiffs and the Class.

519. Defendants are liable to Plaintiffs and the Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages.

520. Pursuant to Ga. Code Ann. § 10-1-370, Plaintiffs will serve the Georgia Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.

COUNT L

**Violation of Georgia’s Fair Business Practices Act
(Georgia Code Annotated Sections 10-1-390, *et seq.*)**

521. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

522. The conduct of Defendants as set forth herein constitutes unfair or deceptive acts or practices, including, but not limited to, Defendants' manufacture and sale of vehicles with CAN buses susceptible to hacking, which Defendants failed to adequately investigate, disclose and remedy, and their misrepresentations and omissions regarding the safety and reliability of their vehicles.

523. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

524. Defendants' actions impact the public interest because Plaintiffs were injured in exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a result of Defendants' generalized course of deception. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business.

36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

534. Defendants' Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

535. Defendants breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Defendants. Defendants have not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

1 536. In addition to these Limited Warranties, Defendants otherwise expressly
2 warranted several attributes, characteristics, and qualities of the CAN bus.

3 537. These warranties are only a sampling of the numerous warranties that Defendants
4 made relating to safety, reliability, and operation. Generally these express warranties promise
5 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
6 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
7 on Defendants' websites, and in uniform statements provided by Defendants to be made by
8 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
9 These affirmations and promises were part of the basis of the bargain between the parties.

10 538. These additional warranties were also breached because the Class Vehicles were
11 not fully operational, safe, or reliable (and remained so even after the problems were
12 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
13 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
14 conforming to these express warranties.

15 539. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
16 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
17 the other Class members whole and because Defendants have failed and/or have refused to
18 adequately provide the promised remedies within a reasonable time.

19 540. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
20 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
21 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
22 law.

23 541. Also, as alleged in more detail herein, at the time that Defendants warranted and
24 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
25 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
26 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
27 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
28 pretenses.

542. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of “replacement or adjustments,” as many incidental and consequential damages have already been suffered due to Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies would be insufficient to make Plaintiffs and the other Class members whole.

543. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in Ga. Code Ann. § 11-2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.

544. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

545. As a direct and proximate result of Defendants’ breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT LII

Breach of the Implied Warranty of Merchantability (Georgia Code Annotated Section 11-2-314)

546. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

547. Defendants are and were at all relevant times merchants with respect to motor vehicles.

548. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions, pursuant to Ga. Code Ann. § 11-2-314.

549. These Class Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, and by other means.

550. As a direct and proximate result of Defendants' breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT LIII

Breach of Contract/Common Law Warranty

551. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

552. Plaintiffs bring this Count on behalf of the Georgia Class.

553. To the extent Defendants' limited remedies are deemed not to be warranties under Georgia's Commercial Code, Plaintiffs, individually and on behalf of the other Class members, plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other Class members.

554. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

555. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT LIV

Fraud by Concealment

(Georgia Code Annotated Section 51-6-2)

556. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

557. As set forth above, Defendants concealed and/or suppressed material facts concerning the safety of their vehicles.

558. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and

1 the other Class members information that is highly relevant to their purchasing decision.

2 559. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
3 other forms of communication, including standard and uniform material provided with each car,
4 that the Class Vehicles they was selling were new, had no significant defects, and would perform
5 and operate properly when driven in normal usage.

6 560. Defendants knew these representations were false when made.

7 561. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
8 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
9 defective CAN buses, as alleged herein.

10 562. Defendants had a duty to disclose that these Class Vehicles were defective,
11 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
12 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
13 Class members relied on Defendants' material representations that the Class Vehicles they were
14 purchasing were safe and free from defects.

15 563. The aforementioned concealment was material because if it had been disclosed
16 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
17 would not have bought or leased those Vehicles at the prices they paid.

18 564. The aforementioned representations were material because they were facts that
19 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
20 knew or recklessly disregarded that their representations were false because they knew the CAN
21 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
22 sell Class Vehicles.

23 565. Plaintiffs and the other Class members relied on Defendants' reputations – along
24 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
25 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
26 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

27 566. As a result of their reliance, Plaintiffs and the other Class members have been
28 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the

1 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
2 Class Vehicles.

3 567. Defendants' conduct was knowing, intentional, with malice, demonstrated a
4 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
5 members.

6 568. Plaintiffs and the other Class members are therefore entitled to an award of
7 punitive damages.

8 **Claims Brought on Behalf of the Hawaii Class**

9 **COUNT LV**

10 **Unfair Competition and Practices** 11 **(Hawaii Revised Statutes Sections 480, *et seq.*)**

12 569. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
13 forth herein.

14 570. Hawaii's Revised Statute § 480-2(a) prohibits "unfair methods of competition and
15 unfair or deceptive acts or practices in the conduct of any trade or commerce. . . ."

16 571. Defendants' conduct as set forth herein constitutes unfair methods of competition
17 and unfair or deceptive acts or practices in violation of Haw. Rev. Stat. § 480-2, because
18 Defendants' acts and practices, including the manufacture and sale of vehicles with CAN buses
19 susceptible to hacking, and Defendants' failure to adequately investigate, disclose and remedy
20 and Defendants' misrepresentations and omissions regarding the safety and reliability of their
21 vehicles, offend established public policy, and because the harm they cause to consumers greatly
22 outweighs any benefits associated with those practices.

23 572. Defendants' conduct has also impaired competition within the automotive
24 vehicles market and has prevented Plaintiffs from making fully informed decisions about whether
25 to purchase or lease Defective Vehicles and/or the price to be paid to purchase or lease Defective
26 Vehicles.

27 573. Defendants' misrepresentations and omissions regarding the safety and reliability
28 of their Defective Vehicles were material and caused Plaintiffs to purchase or lease vehicles they

1 would not have otherwise purchased or leased, or paid as much for, had Plaintiffs known the
2 vehicles were defective.

3 574. Defendants' acts or practices as set forth above occurred in the conduct of trade or
4 commerce.

5 575. Plaintiffs and the Class have suffered injury, including the loss of money or
6 property, as a result of Defendants' unfair methods of competition and unfair or deceptive acts or
7 practices.

8 576. In addition to damages in amounts to be proven at trial, Plaintiffs and the Class
9 seek attorneys' fees, costs of suit and treble damages.

10 577. Plaintiffs and the Class also seek injunctive relief to enjoin Defendants from
11 continuing their unfair competition and unfair or deceptive acts or practices.

12 **COUNT LVI**

13 **Violation of Hawaii's Uniform Deceptive Trade Practice Act** 14 **(Hawaii Revised Statutes Sections 481A, *et seq.*)**

15 578. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
16 forth herein.

17 579. Defendants participated in unfair or deceptive acts or practices that violated the
18 Uniform Deceptive Trade Practice Act ("UDAP"), Haw. Rev. Stat. § 481A, *et seq.*, as described
19 herein.

20 580. By failing to disclose and actively concealing the dangerous risk of hacking,
21 Defendants engaged in deceptive business practices prohibited by the UDAP, Haw. Rev. Stat.
22 § 481A, *et seq.*, including (1) representing that Defective Vehicles have characteristics, uses,
23 benefits, and qualities which they do not have, (2) representing that Defective Vehicles are of a
24 particular standard, quality, and grade when they are not and (3) advertising Defective Vehicles
25 with the intent not to sell them as advertised.

26 581. As alleged above, Defendants made numerous material statements about the
27 safety and reliability of Defective Vehicles that were either false or misleading. Each of these
28 statements contributed to the deceptive context of Defendants' unlawful advertising and

1 representations as a whole.

2 582. Defendants knew that the CAN buses in Defective Vehicles were susceptible to
3 hacking, and were not suitable for their intended use. Defendants nevertheless failed to warn
4 Plaintiffs about these inherent dangers despite having a duty to do so.

5 583. Defendants owed Plaintiffs a duty to disclose the defective nature of Defective
6 Vehicles, including the dangerous risk of hacking, because they:

7 a) Possessed exclusive knowledge of the defects rendering Defective
8 Vehicles inherently more dangerous and unreliable than similar vehicles;

9 b) Intentionally concealed the hazardous situation with Defective Vehicles
10 through their deceptive marketing campaign that they designed to hide the life-threatening
11 problems from Plaintiffs; and/or

12 c) Made incomplete representations about the safety and reliability of
13 Defective Vehicles generally, while purposefully withholding material facts from Plaintiffs that
14 contradicted these representations.

15 584. Defective Vehicles pose an unreasonable risk of death or serious bodily injury to
16 Plaintiffs, passengers, other motorists, pedestrians, and the public at large, because they are
17 susceptible to hacking and loss of driver control.

18 585. Whether or not a vehicle can be hacked and control of the vehicle's essential
19 functions being removed from the driver are facts that a reasonable consumer would consider
20 important in selecting a vehicle to purchase or lease. When Plaintiffs bought Defendants' vehicles
21 for personal, family, or household purposes, they reasonably expected the vehicles would not be
22 susceptible to hacking.

23 586. Defendants' unfair or deceptive acts or practices were likely to and did in fact
24 deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of the
25 Defective Vehicles.

26 587. As a result of their violations of the UDAP detailed above, Defendants caused
27 actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs
28 currently own or lease, or within the class period have owned or leased, Defective Vehicles that

1 are defective and inherently unsafe.

2 588. Plaintiffs risk irreparable injury as a result of Defendants' acts and omissions in
3 violation of the UDAP, and these violations present a continuing risk to Plaintiffs as well as to the
4 general public.

5 589. Plaintiffs seek monetary damages and an order enjoining Defendants' unfair or
6 deceptive acts or practices, restitution, punitive damages, costs of Court, attorney's fees and any
7 other just and proper relief available under the UDAP.

8 **COUNT LVII**

9 **Breach of Express Warranty** 10 **(Hawaii Revised Statutes Section 490:2-313)**

11 590. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 591. Plaintiffs bring this Count on behalf of the Hawaii Class.

14 592. Defendants are and were at all relevant times merchants with respect to motor
15 vehicles.

16 593. In their Limited Warranties and in advertisements, brochures, and through other
17 statements in the media, Defendants expressly warranted that they would repair or replace defects
18 in material or workmanship free of charge if they became apparent during the warranty period.
19 For example, the following language appears in all Class Vehicle Warranty booklets:

20 1. Toyota's warranty

21 *When Warranty Begins*

22 The warranty period begins on the vehicle's in-service date, which is the first date
the vehicle is either delivered to an ultimate purchaser, leased, or used as a
23 company car or demonstrator.

24 *Repairs Made at No Charge*

25 Repairs and adjustments covered by these warranties are made at no charge for
parts and labor.

26 *Basic Warranty*

27 This warranty covers repairs and adjustments needed to correct defects in materials
or workmanship of any part supplied by Toyota Coverage is for 36 months or
28 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

594. Defendants' Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

595. Defendants breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Defendants. Defendants have not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

1 596. In addition to these Limited Warranties, Defendants otherwise expressly
2 warranted several attributes, characteristics, and qualities of the CAN bus.

3 597. These warranties are only a sampling of the numerous warranties that Defendants
4 made relating to safety, reliability, and operation. Generally these express warranties promise
5 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
6 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
7 on Defendants' websites, and in uniform statements provided by Defendants to be made by
8 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
9 These affirmations and promises were part of the basis of the bargain between the parties.

10 598. These additional warranties were also breached because the Class Vehicles were
11 not fully operational, safe, or reliable (and remained so even after the problems were
12 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
13 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
14 conforming to these express warranties.

15 599. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
16 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
17 the other Class members whole and because Defendants have failed and/or have refused to
18 adequately provide the promised remedies within a reasonable time.

19 600. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
20 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
21 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
22 law.

23 601. Also, as alleged in more detail herein, at the time that Defendants warranted and
24 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
25 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
26 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
27 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
28 pretenses.

602. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of “replacement or adjustments,” as many incidental and consequential damages have already been suffered due to Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies would be insufficient to make Plaintiffs and the other Class members whole.

603. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in Haw. Rev. Stat. § 490:2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned and for such other incidental and consequential damages as allowed under Hawaii law.

604. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

605. As a direct and proximate result of Defendants’ breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT LVIII

Breach of Implied Warranty of Merchantability (Hawaii Revised Statutes Section 490:2-314)

606. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

607. Plaintiffs bring this Count on behalf of the Hawaii Class.

608. Defendants are and were at all relevant times merchants with respect to motor vehicles.

609. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

610. These Class Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used.

1 Defendants were provided notice of these issues by numerous complaints filed against them,
2 including the instant Complaint, and by other means.

3 611. Privity is not required in this case because Plaintiffs and the Class are intended
4 third-party beneficiaries of contracts between Defendants and their dealers; specifically, they are
5 the intended beneficiaries of Defendants' implied warranties. The dealers were not intended to be
6 the ultimate consumers of the Defective Vehicles and have no rights under the warranty
7 agreements provided with the Defective Vehicles; the warranty agreements were designed for and
8 intended to benefit the ultimate consumers only.

9 612. As a direct and proximate result of Defendants' breach of the warranties of
10 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

11 **COUNT LIX**

12 **Breach of Contract/Common Law Warranty** 13 **(Based on Hawaii Law)**

14 613. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
15 forth herein.

16 614. Plaintiffs bring this Count on behalf of the Hawaii Class.

17 615. To the extent Defendants' limited remedies are deemed not to be warranties under
18 Hawaii's Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
19 plead in the alternative under common law warranty and contract law. Defendants limited the
20 remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to
21 correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted
22 the quality or nature of those services to Plaintiffs and the other Class members.

23 616. Defendants breached this warranty or contract obligation by failing to repair the
24 Class Vehicles, or to replace them.

25 617. As a direct and proximate result of Defendants' breach of contract or common
26 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
27 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
28 and consequential damages, and other damages allowed by law.

Claims Brought on Behalf of the Idaho Class

COUNT LX

**Violations of the Idaho Consumer Protection Act
(Idaho Civil Code Sections 48-601, et seq.)**

618. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

619. Defendants are “persons” under Idaho Civil Code § 48-602(1).

620. Plaintiffs are “consumers” who purchased or leased one or more Defective Vehicles.

621. Defendants both participated in misleading, false, or deceptive acts that violated the Idaho Consumer Protection Act (“ICPA”), Idaho Civ. Code § 48-601, *et seq.*, as described above and below. Defendants each are directly liable for these violations of law. TMC also is liable for TMS’s violations of the ICPA because TMS acts as TMC’s general agent in the United States for purposes of sales and marketing.

622. By failing to disclose and actively concealing the dangerous risk of hacking in Defective Vehicles equipped with CAN buses, Defendants engaged in deceptive business practices prohibited by the ICPA, including (1) representing that Defective Vehicles have characteristics, uses, and benefits which they do not have, (2) representing that Defective Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Defective Vehicles with the intent not to sell them as advertised, and (4) engaging in acts or practices which are otherwise misleading, false, or deceptive to the consumer.

623. As alleged above, Defendants made numerous material statements about the safety and reliability of Defective Vehicles that were either false or misleading. Each of these statements contributed to the deceptive context of TMC’s and TMS’s unlawful advertising and representations as a whole.

624. Defendants knew that the CAN buses were susceptible to hacking and were not suitable for their intended use. Defendants nevertheless failed to warn Plaintiffs about these inherent dangers despite having a duty to do so.

1 625. Defendants each owed Plaintiffs a duty to disclose the defective nature of
2 Defective Vehicles, including the dangerous risk of hacking, because they:

3 a) Possessed exclusive knowledge of the defects rendering Defective
4 Vehicles inherently more dangerous and unreliable than similar vehicles;

5 b) Intentionally concealed the hazardous situation with Defective Vehicles
6 through their deceptive marketing campaign and recall program that they designed to hide the
7 life-threatening problems from Plaintiffs; and/or

8 c) Made incomplete representations about the safety and reliability of
9 Defective Vehicles while purposefully withholding material facts from Plaintiffs that contradicted
10 these representations.

11 626. Defective Vehicles equipped with CAN buses pose an unreasonable risk of death
12 or serious bodily injury to Plaintiffs, passengers, other motorists, pedestrians, and the public at
13 large, because they are susceptible to hacking.

14 627. Whether or not a vehicle can be hacked and the taken over by a third party are
15 facts that a reasonable consumer would consider important in selecting a vehicle to purchase or
16 lease. When Plaintiffs bought a Defendants Vehicle for personal, family, or household purposes,
17 they reasonably expected the vehicle would (a) not be vulnerable to hacking; and (b) equipped
18 with any necessary fail-safe mechanisms.

19 628. TMC's and TMS's misleading, false, or deceptive acts or practices were likely to
20 and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and
21 reliability of Defective Vehicles.

22 629. As a result of their violations of the ICPA detailed above, Defendants caused
23 actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs
24 currently own or lease, or within the class period have owned or leased, Defective Vehicles that
25 are defective and inherently unsafe. CAN bus defects have caused the value of Defective Vehicles
26 to plummet.

27 630. Plaintiffs risk irreparable injury as a result of TMC's and TMS's acts and
28 omissions in violation of the ICPA, and these violations present a continuing risk to Plaintiffs as

1 well as to the general public.

2 631. Plaintiffs also seek punitive damages against Defendants because each carried out
3 despicable conduct with willful and conscious disregard of the rights and safety of others,
4 subjecting Plaintiffs to cruel and unjust hardship as a result.

5 632. Defendants intentionally and willfully misrepresented the safety and reliability of
6 Defective Vehicles, deceived Plaintiffs on life-or-death matters, and concealed material facts that
7 only they knew, all to avoid the expense and public relations nightmare of correcting a deadly
8 flaw in the Defective Vehicles they repeatedly promised Plaintiffs were safe. Defendants'
9 unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

10 633. Plaintiffs further seek an order enjoining Defendants' unfair or deceptive acts or
11 practices, restitution, punitive damages, costs of Court, attorney's fees under Idaho Civil Code
12 § 48-608, and any other just and proper relief available under the ICPA.

13 **COUNT LXI**

14 **Breach of Express Warranty** 15 **(Idaho Commercial Code Section 28-2-313)**

16 634. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
17 forth herein.

18 635. Defendants are and were at all relevant times merchants with respect to motor
19 vehicles under Idaho Com. Code § 28-2-104.

20 636. Defendants' dealerships who sold Defective Vehicles to Plaintiffs and the Class
21 acted as the agents of TMS and/or TMC. Plaintiffs and the Class therefore were in a relationship
22 of privity with Defendants, to the extent such a relationship is required by Idaho Com. Code § 28-
23 2-313.

24 637. In their Limited Warranties and in advertisements, brochures, and through other
25 statements in the media, Defendants expressly warranted that they would repair or replace defects
26 in material or workmanship free of charge if they became apparent during the warranty period.
27 For example, the following language appears in all Class Vehicle Warranty booklets:
28

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

638. Defendants' Limited Warranties, as well as advertisements, brochures, and other

1 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
2 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
3 equipped with a CAN bus from Defendants.

4 639. Defendants breached the express warranty to repair and adjust to correct defects
5 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
6 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
7 workmanship defects.

8 640. In addition to these Limited Warranties, Defendants otherwise expressly
9 warranted several attributes, characteristics, and qualities of the CAN bus.

10 641. These warranties are only a sampling of the numerous warranties that Defendants
11 made relating to safety, reliability, and operation. Generally these express warranties promise
12 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
13 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
14 on Defendants' websites, and in uniform statements provided by Defendants to be made by
15 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
16 These affirmations and promises were part of the basis of the bargain between the parties.

17 642. These additional warranties were also breached because the Class Vehicles were
18 not fully operational, safe, or reliable (and remained so even after the problems were
19 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
20 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
21 conforming to these express warranties.

22 643. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
23 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
24 the other Class members whole and because Defendants have failed and/or have refused to
25 adequately provide the promised remedies within a reasonable time.

26 644. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the
27 limited warranty of repair or adjustments to parts defective in materials or workmanship, and
28 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

645. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses. The enforcement under these circumstances of any limitations whatsoever precluding the recovery of incidental and/or consequential damages is unenforceable pursuant to Idaho Com. Code § 28-2-302(1).

646. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of “replacement or adjustments,” as many incidental and consequential damages have already been suffered due to Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies would be insufficient to make Plaintiffs and the other Class members whole.

647. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

648. As a direct and proximate result of Defendants’ breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT LXII

Breach of the Implied Warranty of Merchantability (Idaho Commercial Code Section 28-2-314)

649. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

650. Defendants are and were at all relevant times merchants with respect to motor vehicles under Idaho Com. Code § 28-2-104.

651. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the instant transaction, pursuant to Idaho Com. Code § 28-2-314.

652. These Class Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, and by other means.

653. Plaintiffs and the Class have had sufficient direct dealings with either the Defendants or their agents (dealerships) to establish privity of contract between Plaintiffs and the Class. Notwithstanding this, privity is not required in this case because Plaintiffs and the Class are intended third-party beneficiaries of contracts between Defendants and their dealers; specifically, they are the intended beneficiaries of Defendants' implied warranties. The dealers were not intended to be the ultimate consumers of the Defective Vehicles and have no rights under the warranty agreements provided with the Defective Vehicles; the warranty agreements were designed for and intended to benefit the ultimate consumers only.

654. As a direct and proximate result of Defendants' breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT LXIII

Breach of Contract/Common Law Warranty (Under Idaho Law)

655. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

656. To the extent Defendants' repair or adjust commitment is deemed not to be a warranty under Idaho's Commercial Code, Plaintiffs plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other Class members.

657. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

658. As a direct and proximate result of Defendants' breach of contract or common

1 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
2 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
3 and consequential damages, and other damages allowed by law.

4 **COUNT LXIV**

5 **Fraud by Concealment**
6 **(Based on Idaho Law)**

7 659. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
8 forth herein.

9 660. As set forth above, Defendants concealed and/or suppressed material facts
10 concerning the safety of their vehicles.

11 661. Defendants had a duty to disclose these safety issues because they consistently
12 marketed their vehicles as safe and proclaimed that safety is one of Defendants' highest corporate
13 priorities. Once Defendants made representations to the public about safety, Defendants were
14 under a duty to disclose these omitted facts, because where one does speak one must speak the
15 whole truth and not conceal any facts which materially qualify those facts stated. One who
16 volunteers information must be truthful, and the telling of a half-truth calculated to deceive is
17 fraud.

18 662. In addition, Defendants had a duty to disclose these omitted material facts
19 because they were known and/or accessible only to Defendants who have superior knowledge and
20 access to the facts, and Defendants knew they were not known to or reasonably discoverable by
21 Plaintiffs and the Class. These omitted facts were material because they directly impact the safety
22 of the Defective Vehicles.

23 663. Whether or not a vehicle is susceptible to hacking and can be commandeered by a
24 third party are material safety concerns. Defendants possessed exclusive knowledge of the defects
25 rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

26 664. Defendants actively concealed and/or suppressed these material facts, in whole or
27 in part, with the intent to induce Plaintiffs and the Class to purchase Defective Vehicles at a
28 higher price for the vehicles, which did not match the vehicles' true value.

665. Defendants still have not made full and adequate disclosure and continue to defraud Plaintiffs and the Class.

666. Plaintiffs and the Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were in exclusive control of the material facts and such facts were not known to the public or the Class.

667. As a result of the concealment and/or suppression of the facts, Plaintiffs and the Class sustained damage.

668. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and well-being to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

Claims Brought on Behalf of the Illinois Class

COUNT LXV

Violation of Illinois Consumer Fraud and Deceptive Business Practices Act (815 Illinois Compiled Statutes Sections 505/1, *et seq.* and 720 Illinois Compiled Statutes Section 295/1A)

669. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

670. The Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/2 prohibits unfair or deceptive acts or practices in connection with any trade or commerce. Specifically, the Act prohibits suppliers from representing that their goods are of a particular quality or grade they are not.

671. Defendants are "persons" as that term is defined in the Illinois Consumer Fraud and Deceptive Practices Act, 815 Ill. Comp. Stat. 505/1(c).

672. Plaintiffs are "consumers" as that term is defined in the Illinois Consumer Fraud and Deceptive Practices Act, 815 Ill. Comp. Stat. 505/1(e).

673. Defendants' conduct caused Plaintiffs' damages as alleged.

674. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and the Class have been damaged in an amount to be proven at trial, including, but not limited to, actual damages, court costs, and reasonable attorneys' fees pursuant to 815 Ill. Comp. Stat. 505/1, *et seq.*

COUNT LXVI

Violation of the Illinois Uniform Deceptive Trade Practices Act (815 Illinois Compiled Statutes Sections 510/1, *et. seq.* and 720 Illinois Compiled Statutes Section 295/1A)

675. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

676. 815 Ill. Comp. Stat. 510/2 provides that a "person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation," the person does any of the following: "(2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services; . . . (5) represents that goods or services have sponsorship, approval, characteristics ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have; . . . (7) represents that goods or services are of a particular standard, quality, or grade or that goods are a particular style or model, if they are of another; . . . (9) advertises goods or services with intent not to sell them as advertised; . . . [and] (12) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding."

677. Defendants are "persons" within the meaning of 815 Ill. Comp. Stat. 510/1(5).

678. The vehicles sold to Plaintiffs were not of the particular sponsorship, approval, characteristics, ingredients, uses benefits, or qualities represented by Defendants.

679. Defendants' conduct was knowing and/or intentional and/or with malice and/or demonstrated a complete lack of care and/or reckless and/or was in conscious disregard for the rights of Plaintiffs.

680. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs have been damaged in an amount to proven at trial, including, but not limited to, actual and punitive damages, equitable relief and reasonable attorneys' fees.

COUNT LXVII

**Breach of Implied Warranty of Merchantability
(810 Illinois Compiled Statutes Section 5/2-314 and
810 Illinois Compiled Statutes Section 5/2A-212)**

681. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

682. Defendants impliedly warranted that their vehicles were of good and merchantable quality and fit, and safe for their ordinary intended use – transporting the driver and passengers in reasonable safety during normal operation, and without unduly endangering them or members of the public.

683. Defendants breached the implied warranty that the vehicle was merchantable and safe for use as public transportation by marketing, advertising, distributing and selling vehicles with the common design and manufacturing defect, without incorporating adequate electronic or mechanical fail-safes, and while misrepresenting the dangers of such vehicles to the public.

684. These dangerous defects existed at the time the vehicles left Defendants' manufacturing facilities and at the time they were sold to the Plaintiffs.

685. These dangerous defects were the direct and proximate cause of damages to the Plaintiffs.

COUNT LXVIII

**Breach of Express Warranties
(810 Illinois Compiled Statutes Section 5/2-313)**

686. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

687. Defendants expressly warranted – through statements and advertisements – that the vehicles were of high quality, and at a minimum, would actually work properly and safely.

688. Defendants breached this warranty by knowingly selling to Plaintiffs vehicles with dangerous defects, and which were not of high quality.

689. Plaintiffs have been damaged as a direct and proximate result of the breaches by Defendants in that the Defective Vehicles purchased by Plaintiffs were and are worth far less than

1 what the Plaintiffs paid to purchase, which was reasonably foreseeable to Defendants.

2 **COUNT LXIX**

3 **Strict Product Liability (Defective Design)**

4 **(Based on Illinois Law)**

5 690. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
6 forth herein.

7 691. Defendants are and have been at all times pertinent to this Complaint, engaged in
8 the business of designing, manufacturing, assembling, promoting, advertising, distributing and
9 selling Defective Vehicles in the United States, including those owned or leased by the Plaintiffs
10 and the Class.

11 692. Defendants knew and anticipated that the vehicles owned or leased by Plaintiffs
12 and the Class would be sold to and operated by purchasers and/or eventual owners or lessors of
13 Defendants' vehicles, including Plaintiffs and the Class.

14 693. Defendants also knew that these Defective Vehicles would reach the Plaintiffs
15 and the Class without substantial change in their condition from the time the vehicles departed the
16 Defendants' assembly lines.

17 694. Defendants designed the Defective Vehicles defectively, causing them to fail to
18 perform as safely as an ordinary consumer would expect when used in an intended and reasonably
19 foreseeable manner.

20 695. Defendants had the capability to use a feasible, alternative, safer design, and
21 failed to correct the design defects.

22 696. The risks inherent in the design of Defective Vehicles outweigh significantly any
23 benefits of such design.

24 697. Plaintiffs and the Class could not have anticipated and did not know of the
25 aforementioned defects at any time prior to recent revelations regarding the problems of the
26 Defective Vehicles.

27 698. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs have
28 suffered damages, including, but not limited to, diminution in value, return of lease payments and

1 penalties, and injunctive relief related to future lease payments or penalties.

2 699. Plaintiffs and the Class have sustained and will continue to sustain economic
3 losses and other damages for which they are entitled to compensatory and equitable damages and
4 declaratory relief in an amount to be proven at trial.

5 **COUNT LXX**

6 **Strict Product Liability (Failure to Warn)**
7 **(Based on Illinois Law)**

8 700. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
9 forth herein.

10 701. Defendants are and have been at all times pertinent to this Complaint, engaged in
11 the business of designing, manufacturing, assembling, promoting, advertising, distributing and
12 selling Defective Vehicles in the United States, including those owned or leased by the Plaintiffs
13 and the Class.

14 702. Defendants, at all times pertinent to this Complaint, knew and anticipated that the
15 Defective Vehicles and their component parts would be purchased, leased and operated by
16 consumers, including Plaintiffs and the Class.

17 703. Defendants also knew that these Defective Vehicles would reach the Plaintiffs
18 and the Class without substantial change in their conditions from the time that the vehicles
19 departed the Defendants' assembly lines.

20 704. Defendants knew or should have known of the substantial dangers involved in the
21 reasonably foreseeable use of the Defective Vehicles, defective design, manufacturing and lack of
22 sufficient warnings which caused them to have an unreasonably dangerous vulnerability to
23 hacking.

24 705. Defendants failed to adequately warn Plaintiffs and the Class when they became
25 aware of the defect that caused Plaintiffs and the Class' vehicles to be prone to hacking.

26 706. Defendants also failed to timely recall the vehicles or take any action to timely
27 warn Plaintiffs or the Class of these problems and instead continue to subject Plaintiffs and the
28 Class to harm.

1 707. Defendants knew, or should have known, that these defects were not readily
2 recognizable to an ordinary consumer and that consumers would lease, purchase and use these
3 products without inspection.

4 708. Defendants should have reasonably foreseen that the defect in the Defective
5 Vehicles would subject the Plaintiffs and the Class to harm resulting from the defect.

6 709. Plaintiffs and the Class have used the Defective Vehicles for their intended
7 purpose and in a reasonable and foreseeable manner.

8 710. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and
9 the Class have sustained and will continue to sustain economic losses and other damages for
10 which they are entitled to compensatory and equitable damages and declaratory relief in an
11 amount to be proven at trial.

12 **COUNT LXXI**

13 **Fraudulent Concealment/Fraud by Omission**
14 **(Based on Illinois Law)**

15 711. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
16 forth herein.

17 712. Defendants intentionally concealed the above-described material safety
18 information, or acted with reckless disregard for the truth, and denied Plaintiffs and the Class
19 information that is highly relevant to their purchasing decision.

20 713. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
21 other forms of communication, including standard and uniform material provided with each car,
22 that the Class Vehicles they was selling were new, had no significant defects, and would perform
23 and operate properly when driven in normal usage.

24 714. Defendants knew these representations were false when made.

25 715. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
26 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
27 defective CAN buses, as alleged herein.

28 716. Defendants had a duty to disclose that these Class Vehicles were defective,

1 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
2 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
3 Class members relied on Defendants' material representations that the Class Vehicles they were
4 purchasing were safe and free from defects.

5 717. The aforementioned concealment was material because if it had been disclosed
6 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
7 would not have bought or leased those Vehicles at the prices they paid.

8 718. The aforementioned representations were material because they were facts that
9 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
10 knew or recklessly disregarded that their representations were false because they knew the CAN
11 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
12 sell Class Vehicles.

13 719. Plaintiffs and the other Class members relied on Defendants' reputations – along
14 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
15 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
16 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

17 720. As a result of their reliance, Plaintiffs and the other Class members have been
18 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
19 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
20 Class Vehicles.

21 721. Defendants' conduct was knowing, intentional, with malice, demonstrated a
22 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
23 members.

24 722. Plaintiffs and the other Class members are therefore entitled to an award of
25 punitive damages.

COUNT LXXII

**Breach of Lease/Contract
(Based on Illinois Law)**

723. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

724. Plaintiffs and the Class entered into lease agreements with Defendants.

725. Plaintiffs and the Class entered into agreements to purchase Defendants vehicles which also directly or indirectly benefited Defendants.

726. The leases and purchase agreements provided that Plaintiffs and the Class would make payments and in return would receive a new vehicle that would operate properly.

727. Defendants breached their agreements with Plaintiffs and the Class, because the vehicles sold or leased to Plaintiffs and the Class were defective and not of a quality that reasonably would be expected of a new automobile.

728. Plaintiffs and the Class have fully performed their duties under the purchase and lease agreements.

729. Defendants are liable for all damages suffered by Plaintiffs and the Class caused by such breaches of contract.

Claims Brought on Behalf of the Indiana Class

COUNT LXXIII

**Violation of the Indiana Deceptive Consumer Sales Act
(Indiana Code Section 24-5-0.5-3)**

730. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

731. Indiana's Deceptive Consumer Sales Act prohibits a person from engaging in a "deceptive trade practice," which includes representing: "(1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits that they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection it does not have; (2) That such subject of a consumer transaction is of a particular

1 standard, quality, grade, style or model, if it is not and if the supplier knows or should reasonably
2 know that it is not; . . . (7) That the supplier has a sponsorship, approval or affiliation in such
3 consumer transaction that the supplier does not have, and which the supplier knows or should
4 reasonably know that the supplier does not have; . . . (b) Any representations on or within a
5 product or their packaging or in advertising or promotional materials which would constitute a
6 deceptive act shall be the deceptive act both of the supplier who places such a representation
7 thereon or therein, or who authored such materials, and such suppliers who shall state orally or in
8 writing that such representation is true if such other supplier shall know or have reason to know
9 that such representation was false.”

10 732. Defendants are persons with the meaning of Ind. Code § 24-5-0.5-2(2).

11 733. In the course of Defendants’ business, they willfully failed to disclose and
12 actively concealed the dangerous risk of hacking and the lack of adequate fail-safe mechanisms in
13 Defective Vehicles equipped with CAN buses.

14 734. Accordingly, Defendants engaged in unlawful trade practices, including
15 representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they
16 do not have; representing that Defective Vehicles are of a particular standard and quality when
17 they are not; advertising Defective Vehicles with the intent not to sell them as advertised; and
18 otherwise engaging in conduct likely to deceive.

19 735. Defendants’ actions as set forth above occurred in the conduct of trade or
20 commerce.

21 736. Defendants’ conduct proximately caused injuries to Plaintiffs and the Class.

22 737. Plaintiffs and the Class were injured as a result of Defendants’ conduct in that
23 Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain,
24 and their vehicles have suffered a diminution in value. These injuries are the direct and natural
25 consequence of Defendants’ misrepresentations and omissions.

26 738. Plaintiffs seek injunctive relief and, if awarded damages under Indiana Deceptive
27 Consumer Protection Act, treble damages pursuant to Ind. Code § 24-5-0.5-4(a)(1).

28 739. Plaintiffs also seek punitive damages based on the outrageousness and

recklessness of Defendants' conduct and their high net worth.

COUNT LXXIV

Breach of Express Warranty (Indiana Code Section 26-1-2-313)

740. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

741. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

1 3. GM's warranty

2 *Warranty Period*

3 The warranty period for all coverages begins on the date the vehicle is first
4 delivered or put in use and ends at the expiration of the coverage period.

5 *Bumper-to-Bumper Coverage*

6 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
7

8 *No Charge*

9 Warranty repairs, including towing, parts, and labor, will be made at no charge.

10 *Repairs Covered*

11 This warranty covers repairs to correct any vehicle defect related to materials or
12 workmanship occurring during the warranty period. Needed repairs will be
13 performed using new or remanufactured parts.

14 742. Defendants' Limited Warranties, as well as advertisements, brochures, and other
15 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
16 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
17 equipped with a CAN bus from Defendants.

18 743. Defendants breached the express warranty to repair and adjust to correct defects
19 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
20 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
21 workmanship defects.

22 744. In addition to these Limited Warranties, Defendants otherwise expressly
23 warranted several attributes, characteristics, and qualities of the CAN bus.

24 745. These warranties are only a sampling of the numerous warranties that Defendants
25 made relating to safety, reliability, and operation. Generally these express warranties promise
26 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
27 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
28 on Defendants' websites, and in uniform statements provided by Defendants to be made by
29 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
30 These affirmations and promises were part of the basis of the bargain between the parties.

31 746. These additional warranties were also breached because the Class Vehicles were

1 not fully operational, safe, or reliable (and remained so even after the problems were
2 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
3 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
4 conforming to these express warranties.

5 747. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
6 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
7 the other Class members whole and because Defendants have failed and/or have refused to
8 adequately provide the promised remedies within a reasonable time.

9 748. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
10 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
11 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
12 law.

13 749. Also, as alleged in more detail herein, at the time that Defendants warranted and
14 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
15 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
16 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
17 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
18 pretenses.

19 750. Moreover, many of the injuries flowing from the Class Vehicles cannot be
20 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
21 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
22 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
23 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
24 would be insufficient to make Plaintiffs and the other Class members whole.

25 751. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
26 and the Class assert as an additional and/or alternative remedy, as set forth in Ind. Code § 26-1-2-
27 608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of
28 the purchase price of all vehicles currently owned.

1 752. Defendants were provided notice of these issues by the instant Complaint, and by
2 other means before or within a reasonable amount of time after the allegations of Class Vehicle
3 defects became public.

4 753. As a direct and proximate result of Defendants' breach of express warranties,
5 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

6 **COUNT LXXV**

7 **Breach of the Implied Warranty of Merchantability**

8 **(Indiana Code Section 26-1-2-314)**

9 754. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 755. Defendants are and were at all relevant times merchants with respect to motor
12 vehicles.

13 756. A warranty that the Class Vehicles were in merchantable condition is implied by
14 law in the instant transactions.

15 757. These Class Vehicles, when sold and at all times thereafter, were not in
16 merchantable condition and are not fit for the ordinary purpose for which cars are used.
17 Defendants were provided notice of these issues by numerous complaints filed against them,
18 including the instant Complaint, and by other means.

19 758. As a direct and proximate result of Defendants' breach of the warranties of
20 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

21 **COUNT LXXVI**

22 **Breach of Contract/Common Law Warranty**

23 **(Based on Indiana Law)**

24 759. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
25 forth herein.

26 760. To the extent Defendants' repair or adjust commitment is deemed not to be a
27 warranty under Indiana's Commercial Code, Plaintiffs plead in the alternative under common law
28 warranty and contract law. Defendants limited the remedies available to Plaintiffs and the other

1 Class members to repairs and adjustments needed to correct defects in materials or workmanship
2 of any part supplied by Defendants, and/or warranted the quality or nature of those services to
3 Plaintiffs and the other Class members.

4 761. Defendants breached this warranty or contract obligation by failing to repair the
5 Class Vehicles, or to replace them.

6 762. As a direct and proximate result of Defendants' breach of contract or common
7 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
8 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
9 and consequential damages, and other damages allowed by law.

10 **COUNT LXXVII**

11 **Fraudulent Concealment**
12 **(Based on Indiana Law)**

13 763. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
14 forth herein.

15 764. Defendants intentionally concealed the above-described material safety and
16 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
17 the other Class members information that is highly relevant to their purchasing decision.

18 765. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
19 other forms of communication, including standard and uniform material provided with each car,
20 that the Class Vehicles they was selling were new, had no significant defects, and would perform
21 and operate properly when driven in normal usage.

22 766. Defendants knew these representations were false when made.

23 767. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
24 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
25 defective CAN buses, as alleged herein.

26 768. Defendants had a duty to disclose that these Class Vehicles were defective,
27 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
28 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other

1 Class members relied on Defendants' material representations that the Class Vehicles they were
2 purchasing were safe and free from defects.

3 769. The aforementioned concealment was material because if it had been disclosed
4 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
5 would not have bought or leased those Vehicles at the prices they paid.

6 770. The aforementioned representations were material because they were facts that
7 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
8 knew or recklessly disregarded that their representations were false because they knew the CAN
9 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
10 sell Class Vehicles.

11 771. Plaintiffs and the other Class members relied on Defendants' reputations – along
12 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
13 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
14 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

15 772. As a result of their reliance, Plaintiffs and the other Class members have been
16 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
17 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
18 Class Vehicles.

19 773. Defendants' conduct was knowing, intentional, with malice, demonstrated a
20 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
21 members.

22 774. Plaintiffs and the other Class members are therefore entitled to an award of
23 punitive damages.

24 **Claims Brought on Behalf of the Iowa Class**

25 **COUNT LXXVIII**

26 **Violations of the Private Right of Action for Consumer Frauds Act**

27 **(Iowa Code Sections 714H.1, et seq.)**

28 775. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set

1 forth herein.

2 776. Defendants are “persons” under Iowa Code § 714H.2(7).

3 777. Plaintiffs are “consumers,” as defined by Iowa Code § 714H.2(3), who purchased
4 or leased one or more Class Vehicles.

5 778. Defendants participated in unfair or deceptive acts or practices that violated
6 Iowa’s Private Right of Action for Consumer Fraud Act (“Iowa CFA”), Iowa Code §§ 714H.1, *et*
7 *seq.*, as described herein. Defendants are directly liable for these violations of law.

8 779. By failing to disclose and actively concealing the defects in the CAN buses in the
9 Class Vehicles, Defendants engaged in deceptive business practices prohibited by the Iowa CFA,
10 including (1) representing that Class Vehicles have characteristics, uses, benefits, and qualities
11 which they do not have, (2) representing that Class Vehicles are of a particular standard, quality,
12 and grade when they are not, (3) advertising Class Vehicles with the intent not to sell them as
13 advertised, and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or
14 deceptive to the consumer.

15 780. As alleged above, Defendants made numerous material statements about the
16 benefits and characteristics of the Class Vehicles that were either false or misleading. Each of
17 these statements contributed to the deceptive context of Defendants’ unlawful advertising and
18 representations as a whole.

19 781. Defendants knew that the CAN buses in the Class Vehicles were defectively
20 designed or manufactured, were susceptible to hacking, and were not suitable for their intended
21 use. Defendants nevertheless failed to warn Plaintiffs about these defects despite having a duty to
22 do so.

23 782. Defendants owed Plaintiffs a duty to disclose the defective nature of the CAN
24 buses in the Class Vehicles, because Defendants:

25 a) Possessed exclusive knowledge of the defects rendering the Class Vehicles more
26 unreliable than similar vehicles;

27 b) Intentionally concealed the defects through their deceptive marketing campaign
28 that they designed to hide the defects; and/or

1 c) Made incomplete representations about the characteristics and performance of the
2 Class Vehicles generally, while purposefully withholding material facts from Plaintiffs that
3 contradicted these representations.

4 783. Defendants' unfair or deceptive acts or practices were likely to and did in fact
5 deceive reasonable consumers, including Plaintiffs, about the true performance and characteristics
6 of the Class Vehicles.

7 784. As a result of their violations of the Iowa CFA detailed above, Defendants caused
8 actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs
9 currently owns or leases, or within the Class Period has owned or leased, a Class Vehicle that is
10 defective. Defects associated with the CAN buses have caused the value of the Class Vehicles,
11 including Plaintiffs' Vehicle, to decrease.

12 785. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful
13 acts and are, therefore, entitled to damages and other relief as provided under Chapter 714H of the
14 Iowa Code. Because Defendants' conduct was committed willfully, Plaintiffs seeks treble
15 damages as provided in Iowa Code § 714H.5(4).

16 786. Plaintiffs also seeks court costs and attorneys' fees as a result of Defendants'
17 violation of Chapter 714H as provided in Iowa Code § 714H.5(2).

18 **COUNT LXXIX**

19 **Breach of Express Warranty**
20 **(Iowa Code Section 554.2313)**

21 787. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
22 forth herein.

23 788. Defendants are and were at all relevant times merchants with respect to motor
24 vehicles under Iowa Code § 554.2104.

25 789. In their Limited Warranties and in advertisements, brochures, and through other
26 statements in the media, Defendants expressly warranted that they would repair or replace defects
27 in material or workmanship free of charge if they became apparent during the warranty period.
28 For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

790. Defendants' Limited Warranties, as well as advertisements, brochures, and other

1 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
2 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
3 equipped with a CAN bus from Defendants.

4 791. Defendants breached the express warranty to repair and adjust to correct defects
5 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
6 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
7 workmanship defects.

8 792. In addition to these Limited Warranties, Defendants otherwise expressly
9 warranted several attributes, characteristics, and qualities of the CAN bus.

10 793. These warranties are only a sampling of the numerous warranties that Defendants
11 made relating to safety, reliability, and operation. Generally these express warranties promise
12 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
13 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
14 on Defendants' websites, and in uniform statements provided by Defendants to be made by
15 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
16 These affirmations and promises were part of the basis of the bargain between the parties.

17 794. These additional warranties were also breached because the Class Vehicles were
18 not fully operational, safe, or reliable (and remained so even after the problems were
19 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
20 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
21 conforming to these express warranties.

22 795. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
23 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
24 the other Class members whole and because Defendants have failed and/or have refused to
25 adequately provide the promised remedies within a reasonable time.

26 796. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the
27 limited warranty of repair or adjustments to parts defective in materials or workmanship, and
28 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1 797. Also, as alleged in more detail herein, at the time that Defendants warranted and
2 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
3 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
4 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
5 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
6 pretenses.

7 798. Moreover, many of the injuries flowing from the Class Vehicles cannot be
8 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
9 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
10 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
11 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
12 would be insufficient to make Plaintiffs and the other Class members whole.

13 799. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
14 the other Class members assert as an additional and/or alternative remedy, as set forth in Iowa
15 Code § 554.2608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to
16 the other Class members of the purchase price of all Class Vehicles currently owned and for such
17 other incidental and consequential damages as allowed under Iowa Code §§ 554.2711 and
18 554.2608.

19 800. Defendants were provided notice of these issues by the instant Complaint, and by
20 other means before or within a reasonable amount of time after the allegations of Class Vehicle
21 defects became public.

22 801. As a direct and proximate result of Defendants’ breach of express warranties,
23 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

24 **COUNT LXXX**

25 **Breach of Implied Warranty of Merchantability**
26 **(Iowa Code Section 554.2314)**

27 802. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
28 forth herein.

1 803. Defendants are and were at all relevant times merchants with respect to motor
2 vehicles under Iowa Code § 554.2104.

3 804. A warranty that the Class Vehicles were in merchantable condition is implied by
4 law in the instant transactions.

5 805. These Class Vehicles, when sold and at all times thereafter, were not in
6 merchantable condition and are not fit for the ordinary purpose for which cars are used.
7 Defendants were provided notice of these issues by numerous complaints filed against them,
8 including the instant Complaint, and by other means.

9 806. As a direct and proximate result of Defendants' breach of the warranties of
10 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

11 **COUNT LXXXI**

12 **Breach of Contract/Common Law Warranty**
13 **(Based on Iowa Law)**

14 807. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
15 forth herein.

16 808. To the extent Defendants' limited remedies are deemed not to be warranties under
17 Iowa's Commercial Code, Plaintiffs, individually and on behalf of the other Class members, plead
18 in the alternative under common law warranty and contract law. Defendants limited the remedies
19 available to Plaintiffs and the other Class members to repairs and adjustments needed to correct
20 defects in materials or workmanship of any part supplied by Defendants, and/or warranted the
21 quality or nature of those services to Plaintiffs and the other Class members.

22 809. Defendants breached this warranty or contract obligation by failing to repair the
23 Class Vehicles, or to replace them.

24 810. As a direct and proximate result of Defendants' breach of contract or common
25 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
26 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
27 and consequential damages, and other damages allowed by law.
28

COUNT LXXXII

**Fraudulent Concealment
(Based on Iowa Law)**

811. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

812. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

813. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Class Vehicles they was selling were new, had no significant defects, and would perform and operate properly when driven in normal usage.

814. Defendants knew these representations were false when made.

815. The Class Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and defective CAN buses, as alleged herein.

816. Defendants had a duty to disclose that these Class Vehicles were defective, unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other Class members relied on Defendants' material representations that the Class Vehicles they were purchasing were safe and free from defects.

817. The aforementioned concealment was material because if it had been disclosed Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

818. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants knew or recklessly disregarded that their representations were false because they knew the CAN buses were susceptible to hacking. Defendants intentionally made the false statements in order to

1 sell Class Vehicles.

2 819. Plaintiffs and the other Class members relied on Defendants' reputations – along
3 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
4 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
5 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

6 820. As a result of their reliance, Plaintiffs and the other Class members have been
7 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
8 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
9 Class Vehicles.

10 821. Defendants' conduct was knowing, intentional, with malice, demonstrated a
11 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
12 members.

13 822. Plaintiffs and the other Class members are therefore entitled to an award of
14 punitive damages.

15 **Claims Brought on Behalf of the Kansas Class**

16 **COUNT LXXX III**

17 **Violations of the Kansas Consumer Protection Act**
18 **(Kansas Statutes Annotated Sections 50-623, *et seq.*)**

19 823. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
20 forth herein.

21 824. Defendants are "suppliers" under § 50-624(l) of the Kansas Consumer Protection
22 Act ("Kansas CPA")

23 825. Plaintiffs are "consumers," as defined by § 50-624(b) of the Kansas CPA, who
24 purchased or leased one or more Defective Vehicles.

25 826. Defendants both participated in deceptive acts or practices that violated the
26 Kansas CPA, as described above and below. Defendants each are directly liable for these
27 violations of law. TMC also is liable for TMS's violations of the CPA because TMS acts as
28 TMC's general agent in the United States for purposes of sales and marketing.

1 827. Defendants engaged in deceptive acts or practices prohibited by the Kansas CPA,
2 including (1) representing that Defective Vehicles have characteristics, uses, and benefits that
3 they do not have and (2) representing that Defective Vehicles are of a particular standard, quality,
4 and grade when they are of another which differs materially from the representation. Specifically,
5 as alleged above, Defendants made numerous material statements about the safety and reliability
6 of Defective Vehicles that were either false or misleading. Each of these statements contributed to
7 the deceptive context of TMC's and TMS's unlawful advertising and representations as a whole.

8 828. Defendants knew or had reason to know that their representations were false.
9 Defendants knew that the CAN bus in Defective Vehicles was defectively designed or
10 manufactured, was susceptible to hacking, and was not suitable for their intended use. Defendants
11 nevertheless failed to warn Plaintiffs about these inherent dangers despite having a duty to do so.

12 829. Defendants engaged in further deceptive acts or practices prohibited by the
13 Kansas CPA by willfully failing to disclose or willfully concealing, suppressing, or omitting
14 material facts about Defective Vehicles. Specifically, Defendants failed to disclose and actively
15 concealed the dangerous risk of hacking and the lack of adequate fail-safe mechanisms in
16 Defective Vehicles equipped with CAN buses. Defendants knew that the CAN bus in Defective
17 Vehicles was defectively designed or manufactured, was susceptible to hacking, and was not
18 suitable for their intended use. Defendants nevertheless failed to warn Plaintiffs and the Class
19 about these inherent dangers despite having a duty to do so.

20 830. Whether or not a vehicle is vulnerable to hacking and can be commandeered by a
21 third party are facts that a reasonable consumer would consider important in selecting a vehicle to
22 purchase or lease.

23 831. When Plaintiffs bought a Defendants Vehicle for personal, family, or household
24 purposes, they reasonably expected the vehicle would not be vulnerable to hacking, and was
25 equipped with any necessary fail-safe mechanisms.

26 832. Defendants' acts or practices alleged above are unconscionable because, among
27 other reasons, Defendants knew or had reason to know they had made misleading statements
28 of opinion on which Plaintiffs were likely to rely to their detriment.

833. Defendants' deceptive and unconscionable acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of Defective Vehicles as a result of Defendants' violations of the Kansas CPA.

834. Plaintiffs and the Class suffered loss as a result of Defendants' violations of the Kansas CPA detailed above. Plaintiffs currently own or lease, or within the class period have owned or leased, Defective Vehicles that are defective and inherently unsafe. CAN bus defects have caused the value of Defective Vehicles to plummet.

835. Pursuant to § 50-634(b) of the Kansas CPA, Plaintiffs seek monetary relief against Defendants measured as the greater of (a) actual damages in an amount to be determined at trial and (b) civil penalties provided for by § 50-636 of the Kansas CPA.

836. Plaintiffs also seek punitive damages against Defendants because they acted willfully, wantonly, fraudulently, or maliciously. Defendants intentionally and willfully misrepresented the safety and reliability of Defective Vehicles, deceived Plaintiffs on life-or-death matters, and concealed material facts that only they knew, all to avoid the expense and public relations nightmare of correcting a deadly flaw in the Defective Vehicles they repeatedly promised Plaintiffs were safe. Defendants' unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

837. Plaintiffs risk irreparable injury as a result of Defendants' deceptive and unconscionable acts or practices in violation of the Kansas CPA, and these violations present a continuing risk to Plaintiffs as well as to the general public.

838. Plaintiffs and the Class further seek an order enjoining Defendants' deceptive and unconscionable acts or practices, restitution, punitive damages, costs of Court, attorney's fees, and any other just and proper relief available under the Kansas CPA.

COUNT LXXXIV

Breach of Express Warranty (Kansas Statutes Annotated Section 84-2-313)

839. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

840. Defendants are and were at all relevant times merchants with respect to motor vehicles under Kan. Stat. Ann. § 84-2-104.

841. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

1

2 *No Charge*

3 Warranty repairs, including towing, parts, and labor, will be made at no charge.

4 *Repairs Covered*

5 This warranty covers repairs to correct any vehicle defect related to materials or
6 workmanship occurring during the warranty period. Needed repairs will be
7 performed using new or remanufactured parts.

8 842. Defendants' Limited Warranties, as well as advertisements, brochures, and other
9 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
10 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
11 equipped with a CAN bus from Defendants.

12 843. Defendants breached the express warranty to repair and adjust to correct defects
13 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
14 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
15 workmanship defects.

16 844. In addition to these Limited Warranties, Defendants otherwise expressly
17 warranted several attributes, characteristics, and qualities of the CAN bus.

18 845. These warranties are only a sampling of the numerous warranties that Defendants
19 made relating to safety, reliability, and operation. Generally these express warranties promise
20 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
21 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
22 on Defendants' websites, and in uniform statements provided by Defendants to be made by
23 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
24 These affirmations and promises were part of the basis of the bargain between the parties.

25 846. These additional warranties were also breached because the Class Vehicles were
26 not fully operational, safe, or reliable (and remained so even after the problems were
27 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
28 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
conforming to these express warranties.

1 847. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
2 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
3 the other Class members whole and because Defendants have failed and/or have refused to
4 adequately provide the promised remedies within a reasonable time.

5 848. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
6 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
7 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
8 law.

9 849. Also, as alleged in more detail herein, at the time that Defendants warranted and
10 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
11 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
12 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
13 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
14 pretenses.

15 850. Moreover, many of the injuries flowing from the Class Vehicles cannot be
16 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
17 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
18 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
19 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
20 would be insufficient to make Plaintiffs and the other Class members whole.

21 851. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
22 and the Class assert as an additional and/or alternative remedy, as set forth in KAN. STAT. ANN.
23 § 84-2-711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the
24 Class of the purchase price of all vehicles currently owned and for such other incidental and
25 consequential damages as allowed under KAN. STAT. ANN. §§ 84-2-711 and 84-2-608.

26 852. Defendants were provided notice of these issues by the instant Complaint, and by
27 other means before or within a reasonable amount of time after the allegations of Class Vehicle
28 defects became public.

853. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT LXXXV

Breach of the Implied Warranty of Merchantability
(Kansas Statutes Annotated Section 84-2-314)

854. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

855. Plaintiffs are “natural persons” within the meaning of Kan. Stat. Ann. § 84-2-318.

856. Defendants are and were at all relevant times merchants with respect to motor vehicles under Kan. Stat. Ann. § 84-2-104.

857. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the instant transaction, pursuant to Kan. Stat. Ann. § 84-2-314.

858. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the CAN buses that make them vulnerable to hacking and the Defective Vehicles do not have an adequate fail-safe to protect against such attacks.

859. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, and by other means.

860. Privity is not required because the Defective Vehicles are inherently dangerous.

861. As a direct and proximate result of Defendants' breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT LXXXVI

Breach of Contract/Common Law Warranty
(Based on Kansas Law)

862. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

863. To the extent Defendants' limited remedies are deemed not to be warranties under

1 Kansas' Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
2 plead in the alternative under common law warranty and contract law. Defendants limited the
3 remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to
4 correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted
5 the quality or nature of those services to Plaintiffs and the other Class members.

6 864. Defendants breached this warranty or contract obligation by failing to repair the
7 Class Vehicles, or to replace them.

8 865. As a direct and proximate result of Defendants' breach of contract or common
9 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
10 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
11 and consequential damages, and other damages allowed by law.

12 **COUNT LXXXVII**

13 **Fraud by Concealment**
14 **(Based on Kansas Law)**

15 866. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
16 forth herein.

17 867. As set forth above, Defendants concealed and/or suppressed material facts
18 concerning the safety of their vehicles.

19 868. Defendants had a duty to disclose these safety issues because they consistently
20 marketed their vehicles as safe and proclaimed that safety is one of Defendants' highest corporate
21 priorities. Once Defendants made representations to the public about safety, Defendants were under
22 a duty to disclose these omitted facts, because where one does speak one must speak the whole truth
23 and not conceal any facts which materially qualify those facts stated. One who volunteers
24 information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

25 869. In addition, Defendants had a duty to disclose these omitted material facts
26 because they were known and/or accessible only to Defendants who have superior knowledge and
27 access to the facts, and Defendants knew they were not known to or reasonably discoverable by
28 Plaintiffs and the Class. These omitted facts were material because they directly impact the safety

1 of the Defective Vehicles.

2 870. Whether or not a vehicle is susceptible to hacking and being commandeered by a
3 third party are material safety concerns. Defendants possessed exclusive knowledge of the defects
4 rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

5 871. Defendants actively concealed and/or suppressed these material facts, in whole or
6 in part, with the intent to induce Plaintiffs and the Class to purchase Defective Vehicles at a
7 higher price for the vehicles, which did not match the vehicles' true value.

8 872. Defendants still have not made full and adequate disclosure and continue to
9 defraud Plaintiffs and the Class.

10 873. Plaintiffs and the Class were unaware of these omitted material facts and would
11 not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs'
12 and the Class' actions were justified. Defendants were in exclusive control of the material facts
13 and such facts were not known to the public or the Class.

14 874. As a result of the concealment and/or suppression of the facts, Plaintiffs and the
15 Class sustained damage. Plaintiffs and the Class reserve their right to elect either to (a) rescind
16 their purchase or lease of Defective Vehicles and obtain restitution (b) affirm their purchase or
17 lease of Defective Vehicles and recover damages.

18 875. Defendants' acts were done willfully, wantonly, fraudulently, or maliciously,
19 oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the
20 Class' rights and well-being to enrich Defendants.

21 876. Defendants' conduct warrants an assessment of punitive damages in an amount
22 sufficient to deter such conduct in the future, which amount is to be determined according to proof.

23 **Claims Brought on Behalf of the Kentucky Class**

24 **COUNT LXXXVIII**

25 **Violation of the Kentucky Consumer Protection Act**
26 **(Kentucky Revised Statutes Sections 367.110, et seq.)**

27 877. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
28 forth herein.

Defendants in that the Defective Vehicles purchased by Plaintiffs were and are worth far less than what the Plaintiffs paid to purchase, which was reasonably foreseeable to Defendants.

COUNT XC

Breach of Implied Warranties of Merchantability (Kentucky Statutes Annotated Section 335.2-314)

889. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

890. Defendants impliedly warranted that their vehicles were of good and merchantable quality and fit, and safe for their ordinary intended use – transporting the driver and passengers in reasonable safety during normal operation, and without unduly endangering them or members of the public.

891. As described above, there were dangerous defects in the vehicles manufactured, distributed, and/or sold by Defendants, which Plaintiffs purchased, including, but not limited to, defects that caused the vehicles to be vulnerable to hacking.

892. These dangerous defects existed at the time the vehicles left Defendants' manufacturing facilities and at the time they were sold to Plaintiffs. Furthermore, because of these dangerous defects, Plaintiffs did not receive the benefit of their bargain and the vehicles have suffered a diminution in value.

893. These dangerous defects were the direct and proximate cause of damages to the Plaintiffs and the Class.

COUNT XCI

Fraudulent Concealment (Based on Kentucky Law)

894. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

895. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

1 896. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
2 other forms of communication, including standard and uniform material provided with each car,
3 that the Class Vehicles they was selling were new, had no significant defects, and would perform
4 and operate properly when driven in normal usage.

5 897. Defendants knew these representations were false when made.

6 898. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
7 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
8 defective CAN buses, as alleged herein.

9 899. Defendants had a duty to disclose that these Class Vehicles were defective,
10 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
11 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
12 Class members relied on Defendants' material representations that the Class Vehicles they were
13 purchasing were safe and free from defects.

14 900. The aforementioned concealment was material because if it had been disclosed
15 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
16 would not have bought or leased those Vehicles at the prices they paid.

17 901. The aforementioned representations were material because they were facts that
18 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
19 knew or recklessly disregarded that their representations were false because they knew the CAN
20 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
21 sell Class Vehicles.

22 902. Plaintiffs and the other Class members relied on Defendants' reputations – along
23 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
24 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
25 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

26 903. As a result of their reliance, Plaintiffs and the other Class members have been
27 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
28 bargain and overpayment at the time of purchase or lease and/or the diminished value of their

1 Class Vehicles.

2 904. Defendants' conduct was knowing, intentional, with malice, demonstrated a
3 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
4 members.

5 905. Plaintiffs and the other Class members are therefore entitled to an award of
6 punitive damages.

7 **Claims Brought on Behalf of the Louisiana Class**

8 **COUNT XCII**

9 **Louisiana Products Liability Act**

10 **(Louisiana Revised Statutes Sections 9:2800.51, *et seq.*)**

11 906. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 907. Plaintiffs allege that Defendants have defectively designed, manufactured, sold or
14 otherwise placed in the stream of commerce Defective Vehicles as set forth above.

15 908. The product in question is unreasonably dangerous for the following reasons:

16 a) It is unreasonably dangerous in construction or composition as provided in
17 La. Rev. Stat. § 9:2800.55;

18 b) It is unreasonably dangerous in design as provided in La. Rev. Stat.
19 § 9:2800.56;

20 c) It is unreasonably dangerous because an adequate warning about the
21 product was not provided as required by La. Rev. Stat. § 9:2800.57; and

22 d) It is unreasonably dangerous because it does not conform to an express
23 warranty of the manufacturer about the product that render it unreasonably dangerous under La.
24 Rev. Stat. §§ 9:2800.55, *et seq.*, that existed at the time the product left the control of the
25 manufacturer.

26 909. Defendants knew and expected for the Defective Vehicles to eventually be sold to
27 and operated by purchasers and/or eventual owners of the Defective Vehicles, including
28 Plaintiffs; consequently, Plaintiffs were an expected user of the product which Defendants

1 manufactured.

2 910. The Defective Vehicles reached Plaintiffs without substantial changes in their
3 condition from time of completion of manufacture by Defendants.

4 911. The defects in the Defective Vehicles could not have been contemplated by any
5 reasonable person expected to operate the Defective Vehicles, and, therefore, presented an
6 unreasonably dangerous situation for expected users of the Defective Vehicles even though the
7 Defective Vehicles were operated by expected users in a reasonable manner.

8 912. As a direct and proximate cause of Defendants' design, manufacture, assembly,
9 marketing, and sales of the Defective Vehicles, Plaintiffs have sustained and will continue to
10 sustain the loss of use of his/her vehicle, economic losses and consequential damages, and are
11 therefore entitled to compensatory relief according to proof, and entitled to a declaratory
12 judgment that Defendants are liable to Plaintiffs for breach of their duty to design, manufacture,
13 assemble, market, and sell a safe product, fit for their reasonably intended use. Plaintiffs allege
14 that the vulnerability of the CAN buses to hacking would not happen in the absence of a defective
15 product. Plaintiffs allege the application of *res ipsa loquitur* under Louisiana Products Liability
16 Law.

17 **COUNT XCIII**

18 **Redhibition**

19 **(Louisiana Civil Code Articles 2520, *et seq.* and 2545)**

20 913. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
21 forth herein.

22 914. Plaintiffs allege that Defendants defectively designed, manufactured, sold or
23 otherwise placed in the stream of commerce vehicles that are defective.

24 915. Plaintiffs allege that the vulnerability of the CAN buses to hacking would not
25 happen in the absence of a defective product.

26 916. Plaintiffs allege the application of *res ipsa loquitur* under Louisiana Products
27 Liability Law.

28 917. Plaintiffs allege that Defendants have known about safety hazards that result in

1 susceptibility to hacking of their vehicles for a number of years and have failed to adequately
2 address those safety concerns.

3 918. Defendants, as manufacturers of the Defective Vehicles, are responsible for
4 damages caused by the failure of their product to conform to well-defined standards. In particular,
5 the vehicles contain vices or defects which rendered them useless or their use so inconvenient and
6 unsafe that a reasonable buyer would not have purchased them. Defendants manufactured, sold
7 and promoted the vehicles and placed the vehicles into the stream of commerce. Under Louisiana
8 Law, the seller and manufacturers warrants the buyer against redhibitory defects or vices in the
9 things sold. La. Code Civ. P. Art. 2520. The vehicles as sold and promoted by Defendants
10 possessed redhibitory defects because they were not manufactured and marketed in accordance
11 with industry standards and/or were unreasonably dangerous as described above, which rendered
12 the vehicles useless or their use so inconvenient and unsafe that it must be presumed that a buyer
13 would not have bought the vehicles had he/she known of the defect. Pursuant to La. Code Civ. P.
14 Art. 2520, Plaintiffs are entitled to obtain a rescission of the sale of the subject product.

15 919. The vehicles alternatively possess redhibitory defects because the vehicles were
16 not manufactured and marketed in accordance with industry standards and/or were unreasonably
17 dangerous as described above, which diminished the value of the vehicles so that it must be
18 presumed that a reasonable buyer would still have bought the vehicles, but for a lesser price, had
19 the redhibitory defects been disclosed. In this instance, Plaintiffs are entitled to a reduction of the
20 purchase price.

21 920. As the manufacturers of the vehicle, under Louisiana Law, defendants are deemed
22 to know that the vehicle contained redhibitory defects pursuant to La. Code Civ. P. Art. 2545.
23 Defendants are liable as bad faith sellers for selling a defective product with knowledge of defects
24 and thus are liable to Plaintiffs for the price of the subject product, with interest from the purchase
25 date, as well as reasonable expenses occasioned by the sale of the subject product, and attorney's
26 fees.

27 921. Due to the defects and redhibitory vices in the vehicles sold to Plaintiffs, they
28 have suffered damages under Louisiana Law.

COUNT XCIV

**Breach of Implied Warranty of Fitness for Ordinary Use
(Louisiana Civil Code Article 2524)**

922. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

923. At all relevant times, Defendants marketed, sold and distributed the automobile for use by Plaintiffs, knew of the use for which the Defective Vehicles were intended, and impliedly warranted them to be fit for ordinary use.

924. The Defective Vehicles, when sold, were defective, unmerchantable, and unfit for ordinary use.

925. The Defective Vehicles contain vices or defects which render them either absolutely useless or render their use inconvenient, imperfect, and unsafe such that Plaintiffs would not have purchased the Defective Vehicles had they known of the vices or defects.

926. The damages in question arose from the reasonably anticipated use of the product in question.

927. Defendants breached the implied warranties of merchantability and fitness for ordinary use when the Defective Vehicles were sold to Plaintiffs because they are vulnerable to hacking and lack a fail-safe mechanism.

928. As a direct and proximate cause of Defendants' breach of the implied warranties of merchantability and fitness for ordinary use, Plaintiffs and the Class have suffered injuries and damages.

Claims Brought on Behalf of the Maine Class

COUNT XCV

**Violation of Maine Unfair Trade Practices Act
(Maine Revised Statutes Annotated title 5 Sections 205-A, *et seq.*)**

929. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

930. The Maine Unfair Trade Practices Act ("UTPA") makes unlawful "[u]nfair

1 methods of competition and unfair or deceptive acts or practices in the conduct of any trade or
2 commerce. . . .” per Me. Rev. Stat. Ann. tit. 5 § 207.

3 931. The advertising and sale of motor vehicles by Defendants constitutes “trade or
4 commerce” within the meaning of UTPA per Me. Rev. Stat. Ann. tit. 5 § 206(3).

5 932. In the course of Defendants’ business, they willfully failed to disclose and
6 actively concealed the dangerous risk of hacking as described above. This was a deceptive act in
7 that Defendants represented that Defective Vehicles have characteristics, uses, benefits, and
8 qualities which they do not have; represented that Defective Vehicles are of a particular standard
9 and quality when they are not; and advertised Defective Vehicles with the intent not to sell them
10 as advertised. Defendants knew or should have known that their conduct violated the UTPA.

11 933. Defendants engaged in a deceptive trade practice when they failed to disclose
12 material information concerning the Defendants vehicles which was known to Defendants at the
13 time of the sale. Defendants deliberately withheld the information about the vehicles’
14 susceptibility to hacking in order to ensure that consumers would purchase their vehicles and to
15 induce the consumer to enter into a transaction.

16 934. The information withheld was material in that it was information that was
17 important to consumers and likely to affect their choice of, or conduct regarding, the purchase of
18 their cars. Defendants’ withholding of this information was likely to mislead consumers acting
19 reasonably under the circumstances. The vulnerability of the vehicles to hacking and their lack of
20 a fail-safe mechanism were material to Plaintiffs and the Class. Had Plaintiffs and the Class
21 known that their vehicles had these serious safety defects, they would not have purchased their
22 vehicles.

23 935. Defendants’ conduct has caused or is to cause a substantial injury that is not
24 reasonably avoided by consumers, and the harm is not outweighed by a countervailing benefit to
25 consumers or competition.

26 936. As a result of Defendants’ deceptive and unfair practices, Plaintiffs and the Class
27 have suffered loss of money or property. Plaintiffs and the Class overpaid for their vehicles and
28 did not receive the benefit of their bargain. The value of their vehicles have diminished now that

1 the safety issues have come to light, and Plaintiffs and the Class own vehicles that are not safe.

2 937. Plaintiffs are entitled to actual damages, restitution and such other equitable relief,
3 including an injunction, as the Court determines to be necessary and proper.

4 938. Pursuant to Me. Rev. Stat. Ann. tit. 5 § 213(3), Plaintiffs will mail a copy of the
5 complaint to Maine's Attorney General.

6 **COUNT XCVI**

7 **Breach of Implied Warranty of Merchantability**
8 **(Maine Revised Statutes Annotated title 11 Section 2-314)**

9 939. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 940. Defendants are and were at all relevant times merchants with respect to motor
12 vehicles.

13 941. A warranty that the Class Vehicles were in merchantable condition is implied by
14 law in the instant transactions.

15 942. These Class Vehicles, when sold and at all times thereafter, were not in
16 merchantable condition and are not fit for the ordinary purpose for which cars are used.
17 Defendants were provided notice of these issues by numerous complaints filed against them,
18 including the instant Complaint, and by other means.

19 943. As a direct and proximate result of Defendants' breach of the warranties of
20 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

21 **COUNT XCVII**

22 **Breach of Contract**
23 **(Based on Maine Law)**

24 944. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
25 forth herein.

26 945. To the extent Defendants' limited remedies are deemed not to be warranties under
27 Maine's Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
28 plead in the alternative under common law contract law. Defendants limited the remedies

1 available to Plaintiffs and the other Class members to repairs and adjustments needed to correct
 2 defects in materials or workmanship of any part supplied by Defendants, and/or warranted the
 3 quality or nature of those services to Plaintiffs and the other Class members.

4 946. Defendants breached this contract obligation by failing to repair the Class
 5 Vehicles, or to replace them.

6 947. As a direct and proximate result of Defendants' breach of contract, Plaintiffs and
 7 the other Class members have been damaged in an amount to be proven at trial, which shall
 8 include, but is not limited to, all compensatory damages, incidental and consequential damages,
 9 and other damages allowed by law.

10 **Claims Brought on Behalf of the Maryland Class**

11 **COUNT XCVIII**

12 **Violations of the Maryland Consumer Protection Act** 13 **(Maryland Code of Commercial Law Sections 13-101, *et seq.*)**

14 948. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 15 forth herein.

16 949. Plaintiffs are persons within the meaning of the Maryland Consumer Protection
 17 Act (the "Act") for all purposes therein.

18 950. Defendants are persons within the meaning of the Act for all purposes therein.

19 951. The false, deceptive and misleading statements and representations made by
 20 Defendants alleged above and below are Unfair and Deceptive Trade Practices within the
 21 meaning of the Act.

22 952. Defendants participated in unfair or deceptive acts or practices that violated the
 23 Act, as described above and below, and those unfair and deceptive trade practices occurred or
 24 were committed in the course, vocation or occupation of Defendants' businesses. Defendants
 25 engaged in the unfair and deceptive trade practices and each are directly liable for these violations
 26 of law.

27 953. The Unfair and Deceptive Trade Practices as alleged above and below
 28 significantly impact the public as actual or potential customers of Defendants.

1 954. By failing to disclose and actively concealing the dangerous risk of hacking and
2 the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with CAN buses,
3 Defendants engaged in deceptive business practices prohibited by the Act, including, but not
4 limited to, (1) representing that Defective Vehicles have characteristics, uses, benefits, and
5 qualities which they do not have, (2) representing that Defective Vehicles are of a particular
6 standard, quality, and grade when they are not, (3) advertising Defective Vehicles with the intent
7 not to sell them as advertised; (4) representing that a transaction involving Defective Vehicles
8 confers or involves rights, remedies, and obligations which it does not, and (5) representing that
9 the subject of a transaction involving Defective Vehicles has been supplied in accordance with a
10 previous representation when it has not.

11 955. As alleged above, Defendants made numerous material statements about the
12 safety and reliability of Defective Vehicles that were either false or misleading. Each of these
13 statements contributed to the deceptive context of Defendants' unlawful advertising and
14 representations as a whole.

15 956. Defendants' unfair or deceptive acts or practices were likely to and did in fact
16 deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of
17 Defective Vehicles.

18 957. As a direct and proximate result of their unfair and deceptive business practices,
19 and violations of the Act detailed above, Defendants caused actual damages, injuries, and losses
20 to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs currently own or lease,
21 or within the class period have owned or leased, Defective Vehicles that are defective and
22 inherently unsafe. CAN bus defects and the resulting vulnerability to hacking have caused the
23 value of Defective Vehicles to plummet.

24 958. Plaintiffs are entitled to all damages permitted by M.R.S. §§ 13-101, *et seq.*,
25 including actual damages sustained, civil penalties, attorneys' fees, and costs of this action. Also,
26 the State of Maryland is entitled to statutory penalties from defendants for each violation of the
27 Act.

28

COUNT XCIX**Breach of Express Warranty
(Maryland Code of Commercial Law Section 2-313)**

959. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

960. Defendants are and were at all relevant times merchants as defined by the Uniform Commercial Code.

961. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

1 3. GM's warranty

2 *Warranty Period*

3 The warranty period for all coverages begins on the date the vehicle is first
4 delivered or put in use and ends at the expiration of the coverage period.

5 *Bumper-to-Bumper Coverage*

6 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
7

8 *No Charge*

9 Warranty repairs, including towing, parts, and labor, will be made at no charge.

10 *Repairs Covered*

11 This warranty covers repairs to correct any vehicle defect related to materials or
12 workmanship occurring during the warranty period. Needed repairs will be
13 performed using new or remanufactured parts.

14 962. Defendants' Limited Warranties, as well as advertisements, brochures, and other
15 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
16 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
17 equipped with a CAN bus from Defendants.

18 963. Defendants breached the express warranty to repair and adjust to correct defects
19 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
20 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
21 workmanship defects.

22 964. In addition to these Limited Warranties, Defendants otherwise expressly
23 warranted several attributes, characteristics, and qualities of the CAN bus.

24 965. These warranties are only a sampling of the numerous warranties that Defendants
25 made relating to safety, reliability, and operation. Generally these express warranties promise
26 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
27 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
28 on Defendants' websites, and in uniform statements provided by Defendants to be made by
29 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
30 These affirmations and promises were part of the basis of the bargain between the parties.

31 966. These additional warranties were also breached because the Class Vehicles were

1 not fully operational, safe, or reliable (and remained so even after the problems were
2 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
3 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
4 conforming to these express warranties.

5 967. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
6 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
7 the other Class members whole and because Defendants have failed and/or have refused to
8 adequately provide the promised remedies within a reasonable time.

9 968. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
10 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
11 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
12 law.

13 969. Also, as alleged in more detail herein, at the time that Defendants warranted and
14 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
15 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
16 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
17 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
18 pretenses.

19 970. Moreover, many of the injuries flowing from the Class Vehicles cannot be
20 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
21 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
22 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
23 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
24 would be insufficient to make Plaintiffs and the other Class members whole.

25 971. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
26 and the Class assert as an additional and/or alternative remedy, as set forth in Md. Code Com.
27 Law § 2-608 for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the
28 Class of the purchase price of all vehicles currently.

1 marketed their vehicles as safe and proclaimed that safety is one of Defendants' highest corporate
2 priorities. Once Defendants made representations to the public about safety, Defendants were
3 under a duty to disclose these omitted facts, because where one does speak one must speak the
4 whole truth and not conceal any facts which materially qualify those facts stated. One who
5 volunteers information must be truthful, and the telling of a half-truth calculated to deceive is
6 fraud.

7 982. In addition, Defendants had a duty to disclose these omitted material facts
8 because they were known and/or accessible only to Defendants who have superior knowledge and
9 access to the facts, and Defendants knew they were not known to or reasonably discoverable by
10 Plaintiffs and the Class. These omitted facts were material because they directly impact the safety
11 of the Defective Vehicles. Whether or not a vehicle is susceptible to hacking and can be
12 commandeered by a third party are material safety concerns. Defendants possessed exclusive
13 knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable
14 than similar vehicles.

15 983. Defendants actively concealed and/or suppressed these material facts, in whole or
16 in part, with the intent to induce Plaintiffs and the Class to purchase Defective Vehicles at a
17 higher price for the vehicles, which did not match the vehicles' true value.

18 984. Defendants still have not made full and adequate disclosure and continue to
19 defraud Plaintiffs and the Class.

20 985. Plaintiffs and the Class were unaware of these omitted material facts and would
21 not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs'
22 and the Class' actions were justified. Defendants were in exclusive control of the material facts
23 and such facts were not known to the public or the Class.

24 986. As a result of the concealment and/or suppression of the facts, Plaintiffs and the
25 Class sustained damage. For those Plaintiffs and the Class who elect to affirm the sale, these
26 damages, include the difference between the actual value of that which Plaintiffs and the Class
27 paid and the actual value of that which they received, together with additional damages arising
28 from the sales transaction, amounts expended in reliance upon the fraud, compensation for loss of

1 use and enjoyment of the property, and/or lost profits. For those Plaintiffs and the Class who want
 2 to rescind the purchase, then those Plaintiffs and the Class are entitled to restitution and
 3 consequential damages.

4 987. Defendants' acts were done maliciously, oppressively, deliberately, with intent to
 5 defraud, and in reckless disregard of Plaintiffs' and the Class' rights and well-being to enrich
 6 Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount
 7 sufficient to deter such conduct in the future, which amount is to be determined according to
 8 proof.

9 **COUNT CII**

10 **Strict Products Liability – Design Defect** 11 **(Based on Maryland Law)**

12 988. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 13 forth herein.

14 989. At all times relevant hereto, Defendants were engaged in the business of
 15 designing, manufacturing, assembling, promoting, advertising, selling, and distributing
 16 Defendants vehicles in the United States, including, but not limited to, the Defective Vehicles.

17 990. Defendants knew and expected for the Defective Vehicles to eventually be sold to
 18 and operated by consumers and/or eventual owners of the Defective Vehicles, including Plaintiffs
 19 and the Class. Consequently, Plaintiffs and the Class were foreseeable users of the products which
 20 Defendants manufactured.

21 991. The Defective Vehicles reached Plaintiffs and the Class without substantial
 22 change in condition from the time they were manufactured by Defendants.

23 992. The susceptibility of the Defective Vehicles to hackling could not have been
 24 contemplated by any reasonable person expected to operate the Defective Vehicles, and for that
 25 reason, presented an unreasonably dangerous situation for foreseeable users of the Defective
 26 Vehicles even though the Defective Vehicles were operated by foreseeable users in a reasonable
 27 manner.

28 993. Defendants should have reasonably foreseen that the dangerous conditions of the

1 Defective Vehicles being vulnerable to hacking without a fail-safe mechanism to would subject
2 Plaintiffs and the Class to harm.

3 994. As a result of these defective designs, the Defective Vehicles are unreasonably
4 dangerous.

5 995. Plaintiffs and the Class have used the Defective Vehicles reasonably and as
6 intended, to the fullest degree possible given their defective nature, and, nevertheless, have
7 suffered damages through no fault of their own.

8 996. Safer, alternative designs existed for the Defective Vehicles.

9 997. As a direct and proximate result of Defendants' design, manufacture, assembly,
10 marketing, and sales of the Defective Vehicles, Plaintiffs and the Class have sustained and will
11 continue to sustain the loss of the use of their vehicles, economic losses, and consequential
12 damages, and are, therefore, entitled to compensatory relief according to proof, and entitled to a
13 declaratory judgment that Defendants are liable to Plaintiffs and the Class for breach of their duty
14 to design, manufacture, assemble, market, and sell a safe product, fit for their reasonably intended
15 use. Plaintiffs and the Class are therefore entitled to equitable relief as described below.

16 998. Plaintiffs and the Class demand judgment against Defendants for design defects
17 as prayed for below.

18 **COUNT CIII**

19 **Strict Products Liability – Defective Manufacturing** 20 **(Based on Maryland Law)**

21 999. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
22 forth herein.

23 1000. Defendants are the manufacturers, designers, distributors, sellers, or suppliers of
24 the Defective Vehicles.

25 1001. The Defective Vehicles manufactured, designed, sold, distributed, supplied and/or
26 placed in the stream of commerce by Defendants were defective in their manufacture and
27 construction such that they were unreasonably dangerous, were not fit for the ordinary purposes
28 for which they were intended, and/or did not meet the reasonable expectations of any consumer.

1002. The Defective Vehicles manufactured, designed, sold, distributed, supplied and/or placed in the stream of commerce by Defendants, were defective in their manufacture and construction as described at the time they left Defendants' control.

1003. The Defective Vehicles are unreasonably dangerous due to their defective manufacture.

1004. As a direct and proximate result of Plaintiffs' purchase and use of the Defective Vehicles as manufactured, designed, sold, supplied and introduced into the stream of commerce by Defendants, Plaintiffs and the Class suffered economic losses, and will continue to suffer such damages and economic losses in the future.

1005. Plaintiffs demand judgment against Defendants for manufacturing defects as prayed for below.

COUNT CIV

Strict Products Liability – Defect Due to Nonconformance with Representations (Based on Maryland Law)

1006. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1007. Defendants are the manufacturers, designers, distributors, sellers, or suppliers of the Defective Vehicles, and Defendants made representations regarding the character or quality of the Defective Vehicles.

1008. The Defective Vehicles manufactured and supplied by Defendants were defective in that, when they left the hands of Defendants, they did not conform to the representations made by Defendants concerning the Defective Vehicles.

1009. Plaintiffs and the Class justifiably relied upon Defendants' representations regarding the Defective Vehicles when they purchased and used the Defective Vehicles.

1010. As a direct and proximate result of their reliance on Defendants' representations regarding the character and quality of the Defective Vehicles, Plaintiffs and the Class suffered damages and economic losses, and will continue to suffer such damages and economic losses in the future.

1011. Plaintiffs demand judgment against Defendants for manufacturing defects as prayed for below.

Claims Brought on Behalf of the Massachusetts Class

COUNT CV

**Violations of the Massachusetts Consumer Protection Act
(Massachusetts General Laws Chapter 93A)**

1012. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1013. The conduct of Defendants as set forth herein constitutes unfair and deceptive acts or practices in violation of the Massachusetts Consumer Protection Act, Mass. Gen. Laws Ch. 93A, including but not limited to Defendants' design, manufacture, and sale of Class Vehicles with the defective CAN bus, which Defendants failed to adequately investigate, disclose, and remedy, and their misrepresentations and omissions regarding the safety, reliability, and functionality of their Class Vehicles, which misrepresentations and omissions possessed the tendency to deceive.

1014. Defendants engages in the conduct of trade or commerce and the misconduct alleged herein occurred in trade or commerce.

1015. Plaintiffs, individually and on behalf of the other Class members, will make a demand on Defendants pursuant to Mass. Gen. Laws Ch. 93A, § 9(3). The letter will assert that rights of consumers as claimants had been violated, describe the unfair and deceptive acts committed by Defendants, and specify the injuries the Plaintiffs and the other Class members have suffered and the relief they seek.

1016. Therefore, Plaintiffs seeks monetary and equitable relief under the Massachusetts Consumer Protection Act as a result of Defendants' unfair and deceptive acts and practices.

COUNT CVI

**Breach of Express Warranty
(Massachusetts General Laws Chapter 106, Section 2-313)**

1017. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set

1 forth herein.

2 1018. Defendants are and were at all relevant times merchants with respect to motor
3 vehicles.

4 1019. In their Limited Warranties and in advertisements, brochures, and through other
5 statements in the media, Defendants expressly warranted that they would repair or replace defects
6 in material or workmanship free of charge if they became apparent during the warranty period.
7 For example, the following language appears in all Class Vehicle Warranty booklets:

8 1. Toyota's warranty

9 *When Warranty Begins*

10 The warranty period begins on the vehicle's in-service date, which is the first date
11 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
company car or demonstrator.

12 *Repairs Made at No Charge*

13 Repairs and adjustments covered by these warranties are made at no charge for
14 parts and labor.

15 *Basic Warranty*

16 This warranty covers repairs and adjustments needed to correct defects in materials
17 or workmanship of any part supplied by Toyota Coverage is for 36 months or
36,000 miles, whichever occurs first

18 2. Ford's warranty

19 *KNOW WHEN YOUR WARRANTY BEGINS*

20 Your Warranty Start Date is the day you take delivery of your new vehicle or the
21 day it is first put into service

22 *QUICK REFERENCE: WARRANTY COVERAGE*

23 . . .

24 Your Bumper to Bumper Coverage lasts for three years - unless you drive more
25 than 36,000 miles before three years elapse.

26 *WHO PAYS FOR WARRANTY REPAIRS?*

27 You will not be charged for repairs covered by any applicable warranty during the
28 stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first
delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

1 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
2

3 *No Charge*

4 Warranty repairs, including towing, parts, and labor, will be made at no charge.

5 *Repairs Covered*

6 This warranty covers repairs to correct any vehicle defect related to materials or
workmanship occurring during the warranty period. Needed repairs will be
performed using new or remanufactured parts.

7 1020. Defendants' Limited Warranties, as well as advertisements, brochures, and other
8 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
9 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
10 equipped with a CAN bus from Defendants.

11 1021. Defendants breached the express warranty to repair and adjust to correct defects
12 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
13 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
14 workmanship defects.

15 1022. In addition to these Limited Warranties, Defendants otherwise expressly
16 warranted several attributes, characteristics, and qualities of the CAN bus.

17 1023. These warranties are only a sampling of the numerous warranties that Defendants
18 made relating to safety, reliability, and operation. Generally these express warranties promise
19 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
20 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
21 on Defendants' websites, and in uniform statements provided by Defendants to be made by
22 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
23 These affirmations and promises were part of the basis of the bargain between the parties.

24 1024. These additional warranties were also breached because the Class Vehicles were
25 not fully operational, safe, or reliable (and remained so even after the problems were
26 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
27 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
28 conforming to these express warranties.

1 1025. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
2 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
3 the other Class members whole and because Defendants have failed and/or have refused to
4 adequately provide the promised remedies within a reasonable time.

5 1026. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
6 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
7 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
8 law.

9 1027. Also, as alleged in more detail herein, at the time that Defendants warranted and
10 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
11 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
12 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
13 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
14 pretenses.

15 1028. Moreover, many of the injuries flowing from the Class Vehicles cannot be
16 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
17 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
18 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
19 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
20 would be insufficient to make Plaintiffs and the other Class members whole.

21 1029. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
22 and the Class assert as an additional and/or alternative remedy, as set forth in ALM GL ch. 106, §
23 2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class
24 of the purchase price of all vehicles currently owned.

25 1030. Defendants were provided notice of these issues by the instant Complaint, and by
26 other means before or within a reasonable amount of time after the allegations of Class Vehicle
27 defects became public.

28 1031. As a direct and proximate result of Defendants’ breach of express warranties,

1 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

2 **COUNT CVII**

3 **Breach of Implied Warranty of Merchantability**
4 **(Massachusetts General Laws Chapter 106, Section 2-314)**

5 1032. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
6 forth herein.

7 1033. Defendants are and were at all relevant times merchants with respect to motor
8 vehicles.

9 1034. A warranty that the Class Vehicles were in merchantable condition is implied by
10 law in the instant transactions.

11 1035. These Class Vehicles, when sold and at all times thereafter, were not in
12 merchantable condition and are not fit for the ordinary purpose for which cars are used.
13 Defendants were provided notice of these issues by numerous complaints filed against them,
14 including the instant Complaint, and by other means.

15 1036. As a direct and proximate result of Defendants' breach of the warranties of
16 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

17 **COUNT CVIII**

18 **Breach of Contract/Common Law Warranty**
19 **(Based on Massachusetts Law)**

20 1037. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
21 forth herein.

22 1038. Plaintiffs bring this Count on behalf of the Massachusetts Class.

23 1039. To the extent Defendants' limited remedies are deemed not to be warranties under
24 Massachusetts' Commercial Code, Plaintiffs, individually and on behalf of the other Class
25 members, plead in the alternative under common law warranty and contract law. Defendants
26 limited the remedies available to Plaintiffs and the other Class members to repairs and
27 adjustments needed to correct defects in materials or workmanship of any part supplied by
28 Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other

1 Class members.

2 1040. Defendants breached this warranty or contract obligation by failing to repair the
3 Class Vehicles, or to replace them.

4 1041. As a direct and proximate result of Defendants' breach of contract or common
5 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
6 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
7 and consequential damages, and other damages allowed by law.

8 **COUNT CIX**

9 **Fraudulent Concealment**
10 **(Based on Massachusetts Law)**

11 1042. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 1043. Defendants intentionally concealed the above-described material safety and
14 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
15 the other Class members information that is highly relevant to their purchasing decision.

16 1044. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
17 other forms of communication, including standard and uniform material provided with each car,
18 that the Class Vehicles they was selling were new, had no significant defects, and would perform
19 and operate properly when driven in normal usage.

20 1045. Defendants knew these representations were false when made.

21 1046. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
22 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
23 defective CAN buses, as alleged herein.

24 1047. Defendants had a duty to disclose that these Class Vehicles were defective,
25 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
26 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
27 Class members relied on Defendants' material representations that the Class Vehicles they were
28 purchasing were safe and free from defects.

1048. The aforementioned concealment was material because if it had been disclosed Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

1049. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants knew or recklessly disregarded that their representations were false because they knew the CAN buses were susceptible to hacking. Defendants intentionally made the false statements in order to sell Class Vehicles.

1050. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

1051. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

1052. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

1053. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the Michigan Class

COUNT CX

**Violation of the Michigan Consumer Protection Act
(Michigan Compiled Laws Sections 445.901, *et seq.*)**

1054. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1055. Defendants misrepresented the safety of the Defective Vehicles after learning of

1 their defects with the intent that Plaintiffs relied on such representations in their decision
2 regarding the purchase, lease and/or use of the Defective Vehicles.

3 1056. Plaintiffs did, in fact, rely on such representations in their decision regarding the
4 purchase, lease and/or use of the Defective Vehicles.

5 1057. Through those misleading and deceptive statements and false promises,
6 Defendants violated the Michigan Consumer Protection Act.

7 1058. The Michigan Consumer Protection Act applies to Defendants' transactions with
8 Plaintiffs because Defendants' deceptive scheme was carried out in Michigan and affected
9 Plaintiffs.

10 1059. Defendants also failed to advise NHSTA and the public about what they knew
11 about the CAN bus defects in the Defective Vehicles.

12 1060. Plaintiffs relied on Defendants' silence as to known defects in connection with
13 their decision regarding the purchase, lease and/or use of the Defective Vehicles.

14 1061. As a direct and proximate result of Defendants' deceptive conduct and violation
15 of the Michigan Consumer Protection Act, Plaintiffs have sustained and will continue to sustain
16 economic losses and other damages for which they are entitled to compensatory and equitable
17 damages and declaratory relief in an amount to be proven at trial.

18 **COUNT CXI**

19 **Breach of Express Warranty**
20 **(Michigan Compiled Laws Section 440.2313)**

21 1062. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
22 forth herein.

23 1063. Defendants expressly warranted – through statements and advertisements
24 described above – that the vehicles were of high quality, and at a minimum, would actually work
25 properly and safely.

26 1064. Defendants breached this warranty by knowingly selling to Plaintiffs vehicles
27 with dangerous defects, and which were not of high quality.

28 1065. Plaintiffs have been damaged as a direct and proximate result of the breaches by

Defendants in that the Defective Vehicles purchased by Plaintiffs were and are worth far less than what the Plaintiffs paid to purchase, which was reasonably foreseeable to Defendants.

COUNT CXII

Breach of Implied Warranty of Merchantability (Michigan Compiled Laws Section 440.2314)

1066. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1067. Defendants impliedly warranted that their vehicles were of good and merchantable quality and fit, and safe for their ordinary intended use – transporting the driver and passengers in reasonably safety during normal operation, and without unduly endangering them or members of the public.

1068. As described above, there were dangerous defects in the vehicles manufactured, distributed, and/or sold by Defendants, which Plaintiffs purchased, including, but not limited to, defects that caused the vehicles to be vulnerable to hacking.

1069. These dangerous defects existed at the time the vehicles left Defendants' manufacturing facilities and at the time they were sold to Plaintiffs. Furthermore, because of these dangerous defects, Plaintiffs did not receive the benefit of their bargain and the vehicles have suffered a diminution in value.

1070. These dangerous defects were the direct and proximate cause of damages to the Plaintiffs.

Claims Brought on Behalf of the Minnesota Class

COUNT CXIII

Violation of Minnesota False Statement in Advertising Statute (Minnesota Statutes Sections 325F.67 *et seq.*)

1071. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1072. Defendants produced and published advertisements and deceptive and misleading statements on the safety and reliability of the Defective Vehicles, even after learning of their

1 defects, with the intent to sell the Defective Vehicles.

2 1073. Defendants continue to represent or otherwise disseminate misleading information
3 about the defect and cause of the defect with the intent to induce the public to buy the Defective
4 Vehicles.

5 1074. Defendants concealed their deceptive practices in order to increase the sale of and
6 profit from the Defective Vehicles.

7 1075. Defendants violated the Minnesota False Statements in Advertising Act, Minn.
8 Stat. §§ 325F.67, *et seq.*, by publicly misrepresenting safety of the Defective Vehicles, including
9 the susceptibility of the CAN buses to hacking.

10 1076. Defendants also failed to advise the NHTSA and the public about what they knew
11 about the vulnerable CAN buses.

12 1077. The Minnesota False Statements in Advertising Act applies to Plaintiffs'
13 transactions with Defendants because Defendants' deceptive scheme was carried out in Minnesota
14 and affected Plaintiffs.

15 1078. As a direct and proximate result of Defendants' deceptive, unfair, and fraudulent
16 conduct and violations of Minn. Stat. § 325F.67, *et seq.*, Plaintiffs have sustained and will
17 continue to sustain economic losses and other damages for which they are entitled to
18 compensatory and equitable damages and declaratory relief in an amount to be proven at trial.

19 **COUNT CXIV**

20 **Violation of Minnesota Uniform Deceptive Trade Practices Act** 21 **(Minnesota Statutes Sections 325D.43-48, *et seq.*)**

22 1079. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
23 forth herein

24 1080. Defendants engaged in – and continue to engage in – conduct that violates the
25 Minnesota Deceptive Trade Practices Act, Minn. Stat. §§ 325D.44, *et seq.* The violations include
26 the following:

27 a) Defendants violated Minn. Stat. § 325D.44(5) by representing the
28 Defective Vehicles as having characteristics, uses, and benefits of safe and mechanically sound

1 vehicles while knowing that the statements were false and the Defective Vehicles contained
2 defects;

3 b) Defendants violated Minn. Stat. § 325D.44(7) by representing the
4 Defective Vehicles as a non-defective product of a particular standard, quality, or grade while
5 knowing the statements were false and the Defective Vehicles contained defects;

6 c) Defendants violated Minn. Stat. § 325D.44(9) by advertising, marketing,
7 and selling the Defective Vehicles as reliable and without a known defect while knowing those
8 claims were false; and

9 d) Defendants violated Minn. Stat. § 325D.44(13) by creating a likelihood of
10 confusion and/or misrepresenting the safety of the Defective Vehicles.

11 1081. Defendants' deceptive scheme was carried out in Minnesota and affected
12 Plaintiffs.

13 1082. Defendants also failed to advise the NHSTA and the public about what they knew
14 about the susceptibility of the CAN buses to hacking.

15 1083. As a direct and proximate result of Defendants' deceptive conduct and violation
16 of Minn. Stat. §§ 325D.44, *et seq.*, Plaintiffs have sustained and will continue to sustain economic
17 losses and other damages for which they are entitled to compensatory and equitable damages and
18 declaratory relief in an amount to be proven at trial.

19 **COUNT CXV**

20 **Violation of Minnesota Prevention of Consumer Fraud Act** 21 **(Minnesota Statutes Sections 325F.68, *et seq.*)**

22 1084. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
23 forth herein.

24 1085. Defendants misrepresented the safety of the Defective Vehicles after learning of
25 their defects with the intent that Plaintiffs relied on such representations in their decision
26 regarding the purchase, lease and/or use of the Defective Vehicles.

27 1086. Plaintiffs did, in fact, rely on such representations in their decision regarding the
28 purchase, lease and/or use of the Defective Vehicles.

1087. Through these misleading and deceptive statements and false promises, Defendants violated Minn. Stat. § 325F.69.

1088. The Minnesota Prevention of Consumer Fraud Act applies to Defendants' transactions with Plaintiffs because Defendants' deceptive scheme was carried out in Minnesota and affected Plaintiffs.

1089. Defendants also failed to advise the NHSTA and the public about what they knew about the sudden and unintended acceleration defects in the Defective Vehicles.

1090. Plaintiffs relied on Defendants' silence as to known defects in connection with their decision regarding the purchase, lease and/or use of the Defective Vehicles.

1091. As a direct and proximate result of Defendants' deceptive conduct and violation of Minn. Stat. § 325F.69, Plaintiffs have sustained and will continue to sustain economic losses and other damages for which they are entitled to compensatory and equitable damages and declaratory relief in an amount to be proven at trial.

COUNT CXVI

Fraudulent Misrepresentation and Fraudulent Concealment (Based on Minnesota Law)

1092. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1093. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

1094. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Class Vehicles they was selling were new, had no significant defects, and would perform and operate properly when driven in normal usage.

1095. Defendants knew these representations were false when made.

1096. The Class Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and

1 defective CAN buses, as alleged herein.

2 1097. Defendants had a duty to disclose that these Class Vehicles were defective,
3 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
4 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
5 Class members relied on Defendants' material representations that the Class Vehicles they were
6 purchasing were safe and free from defects.

7 1098. The aforementioned concealment was material because if it had been disclosed
8 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
9 would not have bought or leased those Vehicles at the prices they paid.

10 1099. The aforementioned representations were material because they were facts that
11 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
12 knew or recklessly disregarded that their representations were false because they knew the CAN
13 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
14 sell Class Vehicles.

15 1100. Plaintiffs and the other Class members relied on Defendants' reputations – along
16 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
17 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
18 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

19 1101. As a result of their reliance, Plaintiffs and the other Class members have been
20 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
21 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
22 Class Vehicles.

23 1102. Defendants' conduct was knowing, intentional, with malice, demonstrated a
24 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
25 members.

26 1103. Plaintiffs and the other Class members are therefore entitled to an award of
27 punitive damages.
28

COUNT CXVII

**Breach of Express Warranty
(Minnesota Statutes Section 325G.19 Express Warranties)**

1104. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1105. Defendants are and at all relevant times were merchants as defined by the Uniform Commercial Code (“UCC”).

1106. Defendants expressly warranted – through uniform statements described above – that the vehicles were of high quality, and, at a minimum, would actually work properly and safely. These warranties became part of the basis of the bargain.

1107. Defendants breached this warranty by knowingly selling to Plaintiffs vehicles with dangerous defects, and which were not of high quality.

1108. Plaintiffs have been damaged as a direct and proximate result of the breaches by Defendants in that the Defective Vehicles purchased by Plaintiffs were and are worth far less than what the Plaintiffs paid to purchase, which was reasonably foreseeable to Defendants.

1109. Plaintiffs were unaware of these defects and could not have reasonably discovered them when they purchased their vehicles from Defendants.

1110. Plaintiffs and the Class are entitled to damages, including the diminished value of their vehicles and the value of the non-use of the vehicles pending successful repair, in addition to any costs associated with purchasing safer vehicles, incidental and consequential damages, and all other damages allowable under the law, including such further relief as the Court deems just and proper.

COUNT CXVIII

**Breach of Implied Warranty of Merchantability (Strict Liability)
(Minnesota Statutes Section 336.2-314 Implied Warranty; Merchantability; Usage of Trade)**

1111. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1112. Defendants impliedly warranted that their vehicles were of good and

1 merchantable quality and fit, and safe for their ordinary intended use – transporting the driver and
2 passengers in reasonable safety during normal operation, and without unduly endangering them or
3 members of the public.

4 1113. As described above, there were dangerous defects in the vehicles manufactured,
5 distributed, and/or sold by Defendants, which Plaintiffs purchased, including, but not limited to,
6 defects that caused the vehicles to be vulnerable to hacking.

7 1114. These dangerous defects existed at the time the vehicles left Defendants’
8 manufacturing facilities and at the time they were sold to the Plaintiffs. Furthermore, because of
9 these dangerous defects, Plaintiffs did not receive the benefit of their bargain and the vehicles
10 have suffered a diminution in value.

11 1115. These dangerous defects were the direct and proximate cause of damages to the
12 Plaintiffs.

13 **COUNT CXIX**

14 **Strict Liability (Design Defect)**
15 **(Based on Minnesota Law)**

16 1116. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
17 forth herein.

18 1117. Defendants are and have been at all times pertinent to this Complaint, engaged in
19 the business of designing, manufacturing, assembling, promoting, advertising, distributing and
20 selling Defective Vehicles in the United States, including those owned or leased by the Plaintiffs
21 and the Class.

22 1118. Defendants knew and anticipated that the vehicles owned or leased by Plaintiffs
23 and the Class would be sold to and operated by purchasers and/or eventual owners or lessors of
24 Defendants’ vehicles, including Plaintiffs and the Class.

25 1119. Defendants also knew that these Defective Vehicles would reach the Plaintiffs
26 and the Class without substantial change in their condition from the time the vehicles departed the
27 Defendants’ assembly lines.

28 1120. Defendants designed the Defective Vehicles defectively, causing them to fail to

1 perform as safely as an ordinary consumer would expect when used in an intended and reasonably
2 foreseeable manner.

3 1121. Defendants had the capability to use a feasible, alternative, safer design, and
4 failed to correct the design defects.

5 1122. The risks inherent in the design of the Defective Vehicles outweigh significantly
6 any benefits of such design.

7 1123. Plaintiffs and the Class could not have anticipated and did not know of the
8 aforementioned defects at any time prior to recent revelations regarding the problems with the
9 Defective Vehicles.

10 1124. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and
11 the Class have sustained and will continue to sustain economic losses and other damages for
12 which they are entitled to compensatory and equitable damages and declaratory relief in an
13 amount to be proven at trial.

14 **COUNT CXX**

15 **Strict Liability (Failure to Warn)**

16 **(Based on Minnesota Law)**

17 1125. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
18 forth herein.

19 1126. Defendants are and have been at all times pertinent to this Complaint, engaged in
20 the business of designing, manufacturing, assembling, promoting, advertising distributing and
21 selling Defective Vehicles in the United States, including those owned or leased by the Plaintiffs
22 and the Class.

23 1127. Defendants, at all times pertinent to this Complaint, knew and anticipated that the
24 Defective Vehicles and their component parts would be purchased, leased and operated by
25 consumers, including Plaintiffs and the Class.

26 1128. Defendants also knew that these Defective Vehicles would reach the Plaintiffs
27 and the Class without substantial change in their conditions from the time that the vehicles
28 departed the Defendants' assembly lines.

1 1129. Defendants knew or should have known of the substantial dangers involved in the
2 reasonably foreseeable use of the Defective Vehicles, defective design, manufacturing and lack of
3 sufficient warnings caused them to have an unreasonably dangerous propensity to sudden and
4 unintended acceleration.

5 1130. The Defendants failed to adequately warn Plaintiffs and the Class when they
6 became aware of the defect that caused Plaintiffs and the Class vehicles to be prone to sudden and
7 unintended acceleration.

8 1131. Defendants also failed to timely recall the vehicles or take any action to timely
9 warn Plaintiffs or the Class of these problems and instead continue to subject Plaintiffs and the
10 Class to harm.

11 1132. Defendants knew, or should have known, that these defects were not readily
12 recognizable to an ordinary consumer and that consumers would lease, purchase and use these
13 products without inspection.

14 1133. Defendants should have reasonably foreseen that the CAN bus defect in the
15 Defective Vehicles would subject the Plaintiffs and the Class to harm resulting from the defect.

16 1134. Plaintiffs and the Class have used the Defective Vehicles for their intended
17 purpose and in a reasonable and foreseeable manner.

18 1135. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and
19 the Class have sustained and will continue to sustain economic losses and other damages for
20 which they are entitled to compensatory and equitable damages and declaratory relief in an
21 amount to be proven at trial.

22 **Claims Brought on Behalf of the Mississippi Class**

23 **COUNT CXXI**

24 **Mississippi Products Liability Act**

25 **(Mississippi Code Annotated Sections 11-1-63, et seq.)**

26 1136. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
27 forth herein.

28 1137. Defendants have defectively designed, manufactured, sold or otherwise placed in

1 the stream of commerce Defective Vehicles.

2 1138. Defendants are strictly liable in tort for the Plaintiffs' injuries and damages and
3 the Plaintiffs respectfully rely upon the Doctrine as set forth in *Restatement, Second, Torts*
4 § 402(a).

5 1139. Because of the negligence of the design and manufacture of the Defective
6 Vehicle, by which Plaintiffs were injured and the failure of Defendants to warn Plaintiffs of the
7 certain dangers concerning the operation of the Defective Vehicles which were known to
8 Defendants but were unknown to Plaintiffs, the Defendants have committed a tort.

9 1140. The Defective Vehicles which caused Plaintiffs' injuries were manufactured by
10 Defendants.

11 1141. At all times herein material, Defendants negligently and carelessly did certain acts
12 and failed to do other things, including, but not limited to, inventing, developing, designing,
13 researching, guarding, manufacturing, building, inspecting, investigating, testing, labeling,
14 instructing, and negligently and carelessly failing to provide adequate and fair warning of the
15 characteristics, dangers and hazards associated with the operation of the vehicles in question to
16 users of the Defective Vehicles, including, but not limited to, Plaintiffs, and willfully failing to
17 recall or otherwise cure one or more of the defects in the product involved thereby directly and
18 proximately causing the hereinafter described injury.

19 1142. The Defective Vehicles were unsafe for their use by reason of the fact that they
20 were defective. For example, the Defective Vehicles were defective in their design, guarding,
21 development, manufacture, and lack of permanent, accurate, adequate and fair warning of the
22 characteristics, danger and hazard to the user, prospective user and members of the general public,
23 including, but not limited to, Plaintiffs, and because Defendants failed to recall or otherwise cure
24 one or more defects in the vehicles involved thereby directly and proximately causing the
25 described injuries.

26 1143. Defendants, and each of them, knew or reasonably should have known that the
27 above mentioned product would be purchased and used without all necessary testing or inspection
28 for defects by the Plaintiffs and the Class.

1 1144. Plaintiffs were not aware of those defects, or else Plaintiffs was unable, as a
2 practical matter, to cure that defective condition.

3 1145. Plaintiffs used the product in a foreseeable manner.

4 1146. As a proximate result of the negligence of Defendants, Plaintiffs suffered injuries
5 and damages.

6 **COUNT CXXII**

7 **Breach of Implied Warranty of Merchantability**
8 **(Mississippi Code Annotated Section 75-2-314)**

9 1147. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 1148. Defendants have defectively designed, manufactured, sold or otherwise placed in
12 the stream of commerce defective vehicles as set forth above.

13 1149. Defendants impliedly warranted that the Defective Vehicles were merchantable
14 and for the ordinary purpose for which they were designed, manufactured, and sold.

15 1150. The Defective Vehicles were not in merchantable condition or fit for ordinary use
16 due to the defects described above and as a result of the breach of warranty of merchantability by
17 Defendants, Plaintiffs sustained injuries and damages.

18 **COUNT CXXIII**

19 **Negligent Misrepresentation/Fraud**
20 **(Based on Mississippi Law)**

21 1151. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
22 forth herein.

23 1152. As set forth above, Defendants concealed and/or suppressed material facts
24 concerning the safety of their vehicles.

25 1153. Defendants had a duty to disclose these safety issues because they consistently
26 marketed their vehicles as safe and proclaimed that safety is one of Defendants' highest corporate
27 priorities. Once Defendants made representations to the public about safety, Defendants were
28 under a duty to disclose these omitted facts, because where one does speak one must speak the

1 whole truth and not conceal any facts which materially qualify those facts stated. One who
2 volunteers information must be truthful, and the telling of a half-truth calculated to deceive is
3 fraud.

4 1154. In addition, Defendants had a duty to disclose these omitted material facts
5 because they were known and/or accessible only to Defendants who have superior knowledge and
6 access to the facts, and Defendants knew they were not known to or reasonably discoverable by
7 Plaintiffs and the Class. These omitted facts were material because they directly impact the safety
8 of the Defective Vehicles. Whether or not a vehicle is susceptible to hacking and to being
9 commandeered by a third party are material safety concerns. Defendants possessed exclusive
10 knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable
11 than similar vehicles.

12 1155. Defendants actively concealed and/or suppressed these material facts, in whole or
13 in part, with the intent to induce Plaintiffs and the Class to purchase Defective Vehicles at a
14 higher price for the vehicles, which did not match the vehicles' true value.

15 1156. Defendants still have not made full and adequate disclosure and continue to
16 defraud Plaintiffs and the Class.

17 1157. Plaintiffs and the Class were unaware of these omitted material facts and would
18 not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiffs'
19 and the Class' actions were justified. Defendants were in exclusive control of the material facts
20 and such facts were not known to the public or the Class.

21 1158. As a result of the misrepresentation concealment and/or suppression of the facts,
22 Plaintiffs and the Class sustained damage. For those Plaintiffs and the Class who elect to affirm
23 the sale, these damages, under Mississippi law, include the difference between the actual value of
24 that which Plaintiffs and the Class paid and the actual value of that which they received, together
25 with additional damages arising from the sales transaction, amounts expended in reliance upon
26 the fraud, compensation for loss of use and enjoyment of the property, and/or lost profits. For
27 those Plaintiffs and the Class who want to rescind the purchase, then those Plaintiffs and the Class
28 are entitled to restitution and consequential damages under Mississippi law.

1159. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and well-being to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

Claims Brought on Behalf of the Missouri Class

COUNT CXXIV

Violation of Missouri Merchandising Practices Act (Missouri Revised Statutes Sections 407.010, et seq.)

1160. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1161. The conduct of Defendants as set forth herein constitutes unfair or deceptive acts or practices, including, but not limited to, Defendants' manufacture and sale of vehicles with a CAN bus defect that lack an effective fail-safe mechanism, which Defendants failed to adequately investigate, disclose and remedy, and their misrepresentations and omissions regarding the safety and reliability of their vehicles.

1162. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1163. Defendants' actions impact the public interest because Plaintiffs were injured in exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a result of Defendants' generalized course of deception. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business.

1164. Plaintiffs and the Class were injured as a result of Defendants' conduct. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value.

1165. Defendants' conduct proximately caused the injuries to Plaintiffs and the Class.

1166. Defendants are liable to Plaintiffs and the Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages.

1167. Pursuant to Mo. Rev. Stat. § 407.010, Plaintiffs will serve the Missouri Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.

COUNT CXXV

Breach of Express Warranty (Missouri Revised Statutes Section 400.2-313)

1168. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1169. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1170. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

1 *WHO PAYS FOR WARRANTY REPAIRS?*

2 You will not be charged for repairs covered by any applicable warranty during the
3 stated coverage periods

3 3. GM's warranty

4 *Warranty Period*

5 The warranty period for all coverages begins on the date the vehicle is first
6 delivered or put in use and ends at the expiration of the coverage period.

6 *Bumper-to-Bumper Coverage*

7 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
8

8 *No Charge*

9 Warranty repairs, including towing, parts, and labor, will be made at no charge.

10 *Repairs Covered*

11 This warranty covers repairs to correct any vehicle defect related to materials or
12 workmanship occurring during the warranty period. Needed repairs will be
performed using new or remanufactured parts.

13 1171. Defendants' Limited Warranties, as well as advertisements, brochures, and other
14 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
15 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
16 equipped with a CAN bus from Defendants.

17 1172. Defendants breached the express warranty to repair and adjust to correct defects
18 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
19 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
20 workmanship defects.

21 1173. In addition to these Limited Warranties, Defendants otherwise expressly
22 warranted several attributes, characteristics, and qualities of the CAN bus.

23 1174. These warranties are only a sampling of the numerous warranties that Defendants
24 made relating to safety, reliability, and operation. Generally these express warranties promise
25 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
26 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
27 on Defendants' websites, and in uniform statements provided by Defendants to be made by
28 salespeople, or made publicly by Defendants' executives or by other authorized representatives.

1 These affirmations and promises were part of the basis of the bargain between the parties.

2 1175. These additional warranties were also breached because the Class Vehicles were
3 not fully operational, safe, or reliable (and remained so even after the problems were
4 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
5 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
6 conforming to these express warranties.

7 1176. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
8 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
9 the other Class members whole and because Defendants have failed and/or have refused to
10 adequately provide the promised remedies within a reasonable time.

11 1177. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
12 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
13 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
14 law.

15 1178. Also, as alleged in more detail herein, at the time that Defendants warranted and
16 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
17 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
18 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
19 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
20 pretenses.

21 1179. Moreover, many of the injuries flowing from the Class Vehicles cannot be
22 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
23 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
24 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
25 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
26 would be insufficient to make Plaintiffs and the other Class members whole.

27 1180. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
28 and the Class assert as an additional and/or alternative remedy, as set forth in Mo. Rev. Stat.

§ 400.2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.

1181. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1182. As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CXXVI

Breach of the Implied Warranty of Merchantability (Missouri Revised Statutes Section 400.2-314)

1183. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1184. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1185. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions, pursuant to Mo. Rev. Stat. § 400.2-314.

1186. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the CAN buses making them vulnerable to hacking, and the Defective Vehicles do not have an adequate fail-safe to protect against such attacks.

1187. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, and by other means.

1188. Plaintiffs and the Class have had sufficient dealings with either the Defendants or their agents (dealerships) to establish privity of contract between Plaintiffs and the Class. Notwithstanding this, privity is not required in this case because Plaintiffs and the Class are intended third-party beneficiaries of contracts between Defendants and their dealers; specifically, they are the intended beneficiaries of Defendants' implied warranties. The dealers were not

1 intended to be the ultimate consumers of the Defective Vehicles and have no rights under the
2 warranty agreements provided with the Defective Vehicles; the warranty agreements were
3 designed for and intended to benefit the ultimate consumers only. Finally, privity is also not
4 required because Plaintiffs' and the Class' vehicles are dangerous instrumentalities due to the
5 aforementioned defects and nonconformities.

6 1189. As a direct and proximate result of Defendants' breach of the warranties of
7 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

8 **COUNT CXXVII**

9 **Breach of Contract/Common Law Warranty**
10 **(Based on Missouri Law)**

11 1190. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 1191. To the extent Defendants' limited remedies are deemed not to be warranties under
14 Missouri's Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
15 plead in the alternative under common law warranty and contract law. Defendants limited the
16 remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to
17 correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted
18 the quality or nature of those services to Plaintiffs and the other Class members.

19 1192. Defendants breached this warranty or contract obligation by failing to repair the
20 Class Vehicles, or to replace them.

21 1193. As a direct and proximate result of Defendants' breach of contract or common
22 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
23 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
24 and consequential damages, and other damages allowed by law.

25 **COUNT CXXVIII**

26 **Fraudulent Concealment**
27 **(Based on Missouri Law)**

28 1194. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set

1 forth herein.

2 1195. Defendants intentionally concealed the above-described material safety and
3 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
4 the other Class members information that is highly relevant to their purchasing decision.

5 1196. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
6 other forms of communication, including standard and uniform material provided with each car,
7 that the Class Vehicles they was selling were new, had no significant defects, and would perform
8 and operate properly when driven in normal usage.

9 1197. Defendants knew these representations were false when made.

10 1198. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
11 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
12 defective CAN buses, as alleged herein.

13 1199. Defendants had a duty to disclose that these Class Vehicles were defective,
14 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
15 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
16 Class members relied on Defendants' material representations that the Class Vehicles they were
17 purchasing were safe and free from defects.

18 1200. The aforementioned concealment was material because if it had been disclosed
19 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
20 would not have bought or leased those Vehicles at the prices they paid.

21 1201. The aforementioned representations were material because they were facts that
22 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
23 knew or recklessly disregarded that their representations were false because they knew the CAN
24 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
25 sell Class Vehicles.

26 1202. Plaintiffs and the other Class members relied on Defendants' reputations – along
27 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
28 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other

1 similar false statements – in purchasing or leasing Defendants’ Class Vehicles.

2 1203. As a result of their reliance, Plaintiffs and the other Class members have been
3 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
4 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
5 Class Vehicles.

6 1204. Defendants’ conduct was knowing, intentional, with malice, demonstrated a
7 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
8 members.

9 1205. Plaintiffs and the other Class members are therefore entitled to an award of
10 punitive damages.

11 **Claims Brought on Behalf of the Montana Class**

12 **COUNT CXXIX**

13 **Breach of Express Warranty** 14 **(Montana Code Section 30-2-313)**

15 1206. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
16 forth herein.

17 1207. Defendants are and were at all relevant times merchants with respect to motor
18 vehicles under Mont. Code. Ann. § 30-2-104.

19 1208. In their Limited Warranties and in advertisements, brochures, and through other
20 statements in the media, Defendants expressly warranted that they would repair or replace defects
21 in material or workmanship free of charge if they became apparent during the warranty period.
22 For example, the following language appears in all Class Vehicle Warranty booklets:

23 1. Toyota’s warranty

24 *When Warranty Begins*

25 The warranty period begins on the vehicle’s in-service date, which is the first date
the vehicle is either delivered to an ultimate purchaser, leased, or used as a
26 company car or demonstrator.

27 *Repairs Made at No Charge*

28 Repairs and adjustments covered by these warranties are made at no charge for
parts and labor.

1 *Basic Warranty*

2 This warranty covers repairs and adjustments needed to correct defects in materials
3 or workmanship of any part supplied by Toyota Coverage is for 36 months or
4 36,000 miles, whichever occurs first

5 2. Ford's warranty

6 *KNOW WHEN YOUR WARRANTY BEGINS*

7 Your Warranty Start Date is the day you take delivery of your new vehicle or the
8 day it is first put into service

9 *QUICK REFERENCE: WARRANTY COVERAGE*

10 . . .

11 Your Bumper to Bumper Coverage lasts for three years - unless you drive more
12 than 36,000 miles before three years elapse.

13 *WHO PAYS FOR WARRANTY REPAIRS?*

14 You will not be charged for repairs covered by any applicable warranty during the
15 stated coverage periods

16 3. GM's warranty

17 *Warranty Period*

18 The warranty period for all coverages begins on the date the vehicle is first
19 delivered or put in use and ends at the expiration of the coverage period.

20 *Bumper-to-Bumper Coverage*

21 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
22

23 *No Charge*

24 Warranty repairs, including towing, parts, and labor, will be made at no charge.

25 *Repairs Covered*

26 This warranty covers repairs to correct any vehicle defect related to materials or
27 workmanship occurring during the warranty period. Needed repairs will be
28 performed using new or remanufactured parts.

1209. Defendants' Limited Warranties, as well as advertisements, brochures, and other
statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
equipped with a CAN bus from Defendants.

1210. Defendants breached the express warranty to repair and adjust to correct defects
in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and

1 workmanship defects.

2 1211. In addition to these Limited Warranties, Defendants otherwise expressly
3 warranted several attributes, characteristics, and qualities of the CAN bus.

4 1212. These warranties are only a sampling of the numerous warranties that Defendants
5 made relating to safety, reliability, and operation. Generally these express warranties promise
6 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
7 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
8 on Defendants' websites, and in uniform statements provided by Defendants to be made by
9 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
10 These affirmations and promises were part of the basis of the bargain between the parties.

11 1213. These additional warranties were also breached because the Class Vehicles were
12 not fully operational, safe, or reliable (and remained so even after the problems were
13 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
14 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
15 conforming to these express warranties.

16 1214. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
17 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
18 the other Class members whole and because Defendants have failed and/or have refused to
19 adequately provide the promised remedies within a reasonable time.

20 1215. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
21 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
22 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
23 law.

24 1216. Also, as alleged in more detail herein, at the time that Defendants warranted and
25 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
26 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
27 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
28 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent

1 pretenses.

2 1217. Moreover, many of the injuries flowing from the Class Vehicles cannot be
3 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
4 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
5 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
6 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
7 would be insufficient to make Plaintiffs and the other Class members whole.

8 1218. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
9 and the Class assert as an additional and/or alternative remedy, as set forth in Mont. Code § 30-2-
10 711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of
11 the purchase price of all vehicles currently owned and for such other incidental and consequential
12 damages as allowed under Mont. Code §§ 30-2-711 and 30-2-608.

13 1219. Defendants were provided notice of these issues by the instant Complaint, and by
14 other means before or within a reasonable amount of time after the allegations of Class Vehicle
15 defects became public.

16 1220. As a direct and proximate result of Defendants’ breach of express warranties,
17 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

18 **COUNT CXXX**

19 **Breach of the Implied Warranty of Merchantability** 20 **(Montana Code Section 30-2-314)**

21 1221. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
22 forth herein.

23 1222. Defendants are and were at all relevant times merchants with respect to motor
24 vehicles under Mont. Code § 30-2-104.

25 1223. A warranty that the Defective Vehicles were in merchantable condition was
26 implied by law in the instant transaction, pursuant to Mont. Code § 30-2-314.

27 1224. These Class Vehicles, when sold and at all times thereafter, were not in
28 merchantable condition and are not fit for the ordinary purpose for which cars are used.

1 Defendants were provided notice of these issues by numerous complaints filed against them,
2 including the instant Complaint, and by other means.

3 1225. As a direct and proximate result of Defendants' breach of the warranties of
4 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

5 **COUNT CXXXI**

6 **Breach of Contract/Common Law Warranty**
7 **(Based on Montana Law)**

8 1226. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
9 forth herein.

10 1227. To the extent Defendants' limited remedies are deemed not to be warranties under
11 Montana's Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
12 plead in the alternative under common law warranty and contract law. Defendants limited the
13 remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to
14 correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted
15 the quality or nature of those services to Plaintiffs and the other Class members.

16 1228. Defendants breached this warranty or contract obligation by failing to repair the
17 Class Vehicles, or to replace them.

18 1229. As a direct and proximate result of Defendants' breach of contract or common
19 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
20 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
21 and consequential damages, and other damages allowed by law.

22 **COUNT CXXXII**

23 **Fraudulent Concealment**
24 **(Based on Montana Law)**

25 1230. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
26 forth herein.

27 1231. Defendants intentionally concealed the above-described material safety and
28 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and

1 the other Class members information that is highly relevant to their purchasing decision.

2 1232. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
3 other forms of communication, including standard and uniform material provided with each car,
4 that the Class Vehicles they was selling were new, had no significant defects, and would perform
5 and operate properly when driven in normal usage.

6 1233. Defendants knew these representations were false when made.

7 1234. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
8 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
9 defective CAN buses, as alleged herein.

10 1235. Defendants had a duty to disclose that these Class Vehicles were defective,
11 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
12 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
13 Class members relied on Defendants' material representations that the Class Vehicles they were
14 purchasing were safe and free from defects.

15 1236. The aforementioned concealment was material because if it had been disclosed
16 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
17 would not have bought or leased those Vehicles at the prices they paid.

18 1237. The aforementioned representations were material because they were facts that
19 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
20 knew or recklessly disregarded that their representations were false because they knew the CAN
21 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
22 sell Class Vehicles.

23 1238. Plaintiffs and the other Class members relied on Defendants' reputations – along
24 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
25 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
26 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

27 1239. As a result of their reliance, Plaintiffs and the other Class members have been
28 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the

1 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
2 Class Vehicles.

3 1240. Defendants' conduct was knowing, intentional, with malice, demonstrated a
4 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
5 members.

6 1241. Plaintiffs and the other Class members are therefore entitled to an award of
7 punitive damages.

8 **Claims Brought on Behalf of the Nebraska Class**

9 **COUNT CXXXIII**

10 **Violation of the Nebraska Consumer Protection Act** 11 **(Nebraska Revised Statutes Sections 59-1601, et seq.)**

12 1242. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
13 forth herein.

14 1243. The Nebraska Consumer Protection Act ("NCPA") prohibits "unfair or deceptive
15 acts or practices in the conduct of any trade or commerce."

16 1244. "Trade or commerce" means "the sale of assets or services and any commerce
17 directly or indirectly affecting the people of the State of Nebraska."

18 1245. The conduct of Defendants as set forth herein constitutes unfair or deceptive acts
19 or practices, including, but not limited to, Defendants' manufacture and sale of vehicles with a
20 CAN bus defect that lack an effective fail-safe mechanism, which Defendants failed to adequately
21 investigate, disclose and remedy, and their misrepresentations and omissions regarding the safety
22 and reliability of their vehicles, which misrepresentations and omissions possessed the tendency
23 or capacity to mislead.

24 1246. Defendants' actions as set forth above occurred in the conduct of trade or
25 commerce.

26 1247. Defendants' actions impact the public interest because Plaintiffs were injured in
27 exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a
28 result of Defendants' generalized course of deception. All of the wrongful conduct alleged herein

1 occurred, and continues to occur, in the conduct of Defendants' business.

2 1248. Plaintiffs and the Class were injured as a result of Defendants' conduct. Plaintiffs
3 overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their
4 vehicles have suffered a diminution in value.

5 1249. Defendants' conduct proximately caused the injuries to Plaintiffs and the Class,
6 who are entitled to recover actual damages, as well as enhanced damages pursuant to § 59-1609.

7 **COUNT CXXXIV**

8 **Breach of the Implied Warranty of Merchantability**
9 **(Nebraska Revised Statutes Section 2-314)**

10 1250. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
11 forth herein.

12 1251. Defendants are and were at all relevant times merchants with respect to motor
13 vehicles.

14 1252. A warranty that the Class Vehicles were in merchantable condition is implied by
15 law in the instant transactions.

16 1253. These Class Vehicles, when sold and at all times thereafter, were not in
17 merchantable condition and are not fit for the ordinary purpose for which cars are used.
18 Defendants were provided notice of these issues by numerous complaints filed against them,
19 including the instant Complaint, and by other means.

20 1254. As a direct and proximate result of Defendants' breach of the warranties of
21 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

22 **Claims Brought on Behalf of the Nevada Class**

23 **COUNT CXXXV**

24 **Violation of the Nevada Deceptive Trade Practices Act**
25 **(Nevada Revised Statutes Sections 598.0903, et seq.)**

26 1255. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
27 forth herein.

28 1256. Defendants are "persons" as required under the statute.

1 1257. Defendants' actions as set forth above occurred in the course of business.

2 1258. The Nevada Deceptive Trade Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.*,
3 prohibits unfair or deceptive consumer sales practices.

4 1259. The Nev. Rev. Stat. § 598.0915 provides that a person engages in a "deceptive
5 trade practice" if, in the course of his or her business or occupation, he or she does any of the
6 following, including: "5. Knowingly makes a false representation as to the characteristics,
7 ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false
8 representation as to the sponsorship, approval, status, affiliation or connection of a person
9 therewith"; "7. Represents that goods or services for sale or lease are of a particular standard,
10 quality or grade, or that such goods are of a particular style or model, if he or she knows or should
11 know that they are of another standard, quality, grade, style or model"; "9. Advertises goods or
12 services with intent not to sell or lease them as advertised"; or "15. Knowingly makes any other
13 false representation in a transaction."

14 1260. In the course of Defendants' business, they willfully failed to disclose and
15 actively concealed the dangerous risk of hacking and the lack of adequate fail-safe mechanisms in
16 Defective Vehicles equipped with CAN buses as described above. Accordingly, Defendants
17 engaged in deceptive trade practices, including making false representation as to the
18 characteristics, uses, and benefits of the Defective Vehicles; representing that Defective Vehicles
19 are of a particular standard and quality when they are not; advertising Defective Vehicles with the
20 intent not to sell them as advertised; and knowingly made numerous other false representations as
21 further described during the fact section of this complaint.

22 1261. Defendants knowingly made false representations to consumers with the intent to
23 induce consumers into purchasing Defendants' vehicles. Plaintiffs reasonably relied on false
24 representations by Defendants and were induced to each purchase a Defendants vehicle, to his/her
25 detriment. As a result of these unlawful trade practices, Plaintiffs have suffered ascertainable loss.

26 1262. Plaintiffs and the Class suffered ascertainable loss caused by Defendants' false
27 representations and failure to disclose material information. Plaintiffs and the Class overpaid for
28 their vehicles and did not receive the benefit of their bargain. The value of their vehicles has

diminished now that the safety issues have come to light, and Plaintiffs and the Class own vehicles that are not safe.

COUNT CXXXVI

Breach of Express Warranty (Nevada Revised Statutes Sections 104.2313)

1263. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1264. Defendants are and were at all relevant times merchants with respect to motor vehicles under the Uniform Commercial Code.

1265. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period.

For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

1 *WHO PAYS FOR WARRANTY REPAIRS?*

2 You will not be charged for repairs covered by any applicable warranty during the
3 stated coverage periods

4 3. GM's warranty

5 *Warranty Period*

6 The warranty period for all coverages begins on the date the vehicle is first
7 delivered or put in use and ends at the expiration of the coverage period.

8 *Bumper-to-Bumper Coverage*

9 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
10

11 *No Charge*

12 Warranty repairs, including towing, parts, and labor, will be made at no charge.

13 *Repairs Covered*

14 This warranty covers repairs to correct any vehicle defect related to materials or
15 workmanship occurring during the warranty period. Needed repairs will be
16 performed using new or remanufactured parts.

17 1266. Defendants' Limited Warranties, as well as advertisements, brochures, and other
18 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
19 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
20 equipped with a CAN bus from Defendants.

21 1267. Defendants breached the express warranty to repair and adjust to correct defects
22 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
23 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
24 workmanship defects.

25 1268. In addition to these Limited Warranties, Defendants otherwise expressly
26 warranted several attributes, characteristics, and qualities of the CAN bus.

27 1269. These warranties are only a sampling of the numerous warranties that Defendants
28 made relating to safety, reliability, and operation. Generally these express warranties promise
29 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
30 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
31 on Defendants' websites, and in uniform statements provided by Defendants to be made by
32 salespeople, or made publicly by Defendants' executives or by other authorized representatives.

1 These affirmations and promises were part of the basis of the bargain between the parties.

2 1270. These additional warranties were also breached because the Class Vehicles were
3 not fully operational, safe, or reliable (and remained so even after the problems were
4 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
5 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
6 conforming to these express warranties.

7 1271. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
8 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
9 the other Class members whole and because Defendants have failed and/or have refused to
10 adequately provide the promised remedies within a reasonable time.

11 1272. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
12 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
13 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
14 law.

15 1273. Also, as alleged in more detail herein, at the time that Defendants warranted and
16 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
17 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
18 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
19 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
20 pretenses.

21 1274. Moreover, many of the injuries flowing from the Class Vehicles cannot be
22 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
23 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
24 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
25 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
26 would be insufficient to make Plaintiffs and the other Class members whole.

27 1275. Defendants were provided notice of these issues by the instant Complaint, and by
28 other means before or within a reasonable amount of time after the allegations of Class Vehicle

1 defects became public.

2 1276. As a direct and proximate result of Defendants' breach of express warranties,
3 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

4 **COUNT CXXXVII**

5 **Breach of the Implied Warranty of Merchantability**
6 **(Nevada Revised Statutes Section 104.2314)**

7 1277. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
8 forth herein.

9 1278. Defendants are and were at all relevant times merchants with respect to motor
10 vehicles under the Uniform Commercial Code.

11 1279. A warranty that the Defective Vehicles were in merchantable condition was
12 implied by law in the instant transaction, pursuant to the Uniform Commercial Code.

13 1280. These Class Vehicles, when sold and at all times thereafter, were not in
14 merchantable condition and are not fit for the ordinary purpose for which cars are used.
15 Defendants were provided notice of these issues by numerous complaints filed against them,
16 including the instant Complaint, and by other means.

17 1281. As a direct and proximate result of Defendants' breach of the warranties of
18 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

19 **COUNT CXXXVIII**

20 **Breach of Contract/Common Law Warranty**
21 **(Based on Nevada Law)**

22 1282. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
23 forth herein.

24 1283. To the extent Defendants' limited remedies are deemed not to be warranties under
25 Nevada's Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
26 plead in the alternative under common law warranty and contract law. Defendants limited the
27 remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to
28 correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted

1 the quality or nature of those services to Plaintiffs and the other Class members.

2 1284. Defendants breached this warranty or contract obligation by failing to repair the
3 Class Vehicles, or to replace them.

4 1285. As a direct and proximate result of Defendants' breach of contract or common
5 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
6 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
7 and consequential damages, and other damages allowed by law.

8 **COUNT CXXXIX**

9 **Fraudulent Concealment**
10 **(Based on Nevada Law)**

11 1286. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 1287. Defendants intentionally concealed the above-described material safety and
14 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
15 the other Class members information that is highly relevant to their purchasing decision.

16 1288. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
17 other forms of communication, including standard and uniform material provided with each car,
18 that the Class Vehicles they was selling were new, had no significant defects, and would perform
19 and operate properly when driven in normal usage.

20 1289. Defendants knew these representations were false when made.

21 1290. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
22 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
23 defective CAN buses, as alleged herein.

24 1291. Defendants had a duty to disclose that these Class Vehicles were defective,
25 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
26 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
27 Class members relied on Defendants' material representations that the Class Vehicles they were
28 purchasing were safe and free from defects.

1292. The aforementioned concealment was material because if it had been disclosed Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

1293. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants knew or recklessly disregarded that their representations were false because they knew the CAN buses were susceptible to hacking. Defendants intentionally made the false statements in order to sell Class Vehicles.

1294. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

1295. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

1296. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

1297. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

Claims Brought on Behalf of the New Hampshire Class

COUNT CXL

Violation of New Hampshire Consumer Protection Act (New Hampshire Revised Statutes Annotated Sections 358A:1, et seq.)

1298. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1299. The New Hampshire Consumer Protection Act ("CPA") prohibits a person, in the

1 conduct of any trade or commerce, from doing any of the following:

2 1300. “(V) Representing that goods or services have . . . characteristics, . . . uses,
3 benefits, or quantities that they do not have; . . . (VII) Representing that goods or services are of a
4 particular standard, quality, or grade, . . . if they are of another; . . . and (IX) Advertising goods or
5 services with intent not to sell them as advertised.” N.H. Rev. Stat. § 358-A:2.

6 1301. Defendants are persons within the meaning of the CPA. *See* N.H. Rev. Stat.
7 § 358A:1(I).

8 1302. In the course of Defendants’ business, they willfully failed to disclose and
9 actively concealed the dangerous risk of hacking and the lack of adequate fail-safe mechanisms in
10 Defective Vehicles equipped with CAN buses as described above. Accordingly, Defendants
11 engaged in unlawful trade practices, including representing that Defective Vehicles have
12 characteristics, uses, benefits, and qualities which they do not have; representing that Defective
13 Vehicles are of a particular standard and quality when they are not; and advertising Defective
14 Vehicles with the intent not to sell them as advertised. Defendants knew or should have known
15 that their conduct violated the CPA.

16 1303. Defendants engaged in a deceptive trade practice when they failed to disclose
17 material information concerning the Defendants vehicles which was known to Defendants at the
18 time of the sale. Defendants deliberately withheld the information about the vehicles’
19 vulnerability to hacking in order to ensure that consumers would purchase their vehicles and to
20 induce the consumer to enter into a transaction.

21 1304. The susceptibility of the vehicles to hacking and their lack of a fail-safe
22 mechanism were material to Plaintiffs and the Class. Had Plaintiffs and the Class known that their
23 vehicles had these serious safety defects, they would not have purchased their vehicles.

24 1305. Defendants’ failure to disclose material information has injured Plaintiffs and the
25 Class. Plaintiffs and the Class overpaid for their vehicles and did not receive the benefit of their
26 bargain. The value of their vehicles has diminished now that the safety issues have come to light,
27 and Plaintiffs and the Class own vehicles that are not safe.

28 1306. Plaintiffs are entitled to recover the greater of actual damages or \$1,000 pursuant

to N.H. Rev. Stat. § 358-A:10. Plaintiffs are also entitled to treble damages because Defendants acted willfully in their unfair and deceptive practices.

COUNT CXLI

Breach of Express Warranty

(New Hampshire Revised Statutes Annotated Section 382-A:2-313)

1307. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1308. Defendants are and were at all relevant times merchants with respect to motor vehicles under N.H. Rev. Stat. § 382-A:2-313.

1309. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period.

For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

1 *WHO PAYS FOR WARRANTY REPAIRS?*

2 You will not be charged for repairs covered by any applicable warranty during the
3 stated coverage periods

4 3. GM's warranty

5 *Warranty Period*

6 The warranty period for all coverages begins on the date the vehicle is first
7 delivered or put in use and ends at the expiration of the coverage period.

8 *Bumper-to-Bumper Coverage*

9 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
10

11 *No Charge*

12 Warranty repairs, including towing, parts, and labor, will be made at no charge.

13 *Repairs Covered*

14 This warranty covers repairs to correct any vehicle defect related to materials or
15 workmanship occurring during the warranty period. Needed repairs will be
16 performed using new or remanufactured parts.

17 1310. Defendants' Limited Warranties, as well as advertisements, brochures, and other
18 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
19 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
20 equipped with a CAN bus from Defendants.

21 1311. Defendants breached the express warranty to repair and adjust to correct defects
22 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
23 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
24 workmanship defects.

25 1312. In addition to these Limited Warranties, Defendants otherwise expressly
26 warranted several attributes, characteristics, and qualities of the CAN bus.

27 1313. These warranties are only a sampling of the numerous warranties that Defendants
28 made relating to safety, reliability, and operation. Generally these express warranties promise
heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
on Defendants' websites, and in uniform statements provided by Defendants to be made by
salespeople, or made publicly by Defendants' executives or by other authorized representatives.

1 These affirmations and promises were part of the basis of the bargain between the parties.

2 1314. These additional warranties were also breached because the Class Vehicles were
3 not fully operational, safe, or reliable (and remained so even after the problems were
4 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
5 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
6 conforming to these express warranties.

7 1315. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
8 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
9 the other Class members whole and because Defendants have failed and/or have refused to
10 adequately provide the promised remedies within a reasonable time.

11 1316. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
12 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
13 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
14 law.

15 1317. Also, as alleged in more detail herein, at the time that Defendants warranted and
16 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
17 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
18 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
19 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
20 pretenses.

21 1318. Moreover, many of the injuries flowing from the Class Vehicles cannot be
22 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
23 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
24 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
25 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
26 would be insufficient to make Plaintiffs and the other Class members whole.

27 1319. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
28 and the Class assert as an additional and/or alternative remedy, as set forth in N.H. Rev. Stat.

1 §§ 382-A:2-608 and 382-A:2-711, for a revocation of acceptance of the goods, and for a return to
 2 Plaintiffs and to the Class of the purchase price of all vehicles currently owned and for such other
 3 incidental and consequential damages as allowed under N.H. Rev. Stat. §§ 382-A:2-608 and 382-
 4 A:2-711.

5 1320. Defendants were provided notice of these issues by the instant Complaint, and by
 6 other means before or within a reasonable amount of time after the allegations of Class Vehicle
 7 defects became public.

8 1321. As a direct and proximate result of Defendants' breach of express warranties,
 9 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

10 **COUNT CXLII**

11 **Breach of Implied Warranty of Merchantability** 12 **(New Hampshire Revised Statutes Annotated Section 382-A:2-314)**

13 1322. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 14 forth herein.

15 1323. Defendants are and were at all relevant times merchants with respect to motor
 16 vehicles.

17 1324. A warranty that the Class Vehicles were in merchantable condition is implied by
 18 law in the instant transactions.

19 1325. These Class Vehicles, when sold and at all times thereafter, were not in
 20 merchantable condition and are not fit for the ordinary purpose for which cars are used.
 21 Defendants were provided notice of these issues by numerous complaints filed against them,
 22 including the instant Complaint, and by other means.

23 1326. As a direct and proximate result of Defendants' breach of the warranties of
 24 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

25 **COUNT CXLIII**

26 **Breach of Common Law Warranty** 27 **(Based on New Hampshire Law)**

28 1327. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set

1 forth herein.

2 1328. To the extent Defendants' limited remedies are deemed not to be warranties under
3 New Hampshire's Commercial Code, Plaintiffs, individually and on behalf of the other Class
4 members, plead in the alternative under common law contract law. Defendants limited the
5 remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to
6 correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted
7 the quality or nature of those services to Plaintiffs and the other Class members.

8 1329. Defendants breached this warranty or contract obligation by failing to repair the
9 Class Vehicles, or to replace them.

10 1330. As a direct and proximate result of Defendants' breach of contract or common
11 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
12 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
13 and consequential damages, and other damages allowed by law.

14 **Claims Brought on Behalf of the New Jersey Class**

15 **COUNT CXLIV**

16 **Violations of the New Jersey Consumer Fraud Act**
17 **(New Jersey Statutes Annotated Sections 56:8-1, *et seq.*)**

18 1331. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
19 forth herein.

20 1332. The New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1, *et seq.* ("NJ
21 CFA"), prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

22 1333. In the course of Defendants' business, they willfully failed to disclose and
23 actively concealed the dangerous risk of CAN bus hacking in Class Vehicles as described above.
24 Accordingly, Defendants engaged in unfair and deceptive trade practices, including representing
25 that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have;
26 representing that Class Vehicles are of a particular standard and quality when they are not;
27 advertising Class Vehicles with the intent not to sell them as advertised; and otherwise engaging
28 in conduct likely to deceive. Further, Defendants' acts and practices described herein offend

1 established public policy because the harm they cause to consumers, motorists, and pedestrians
 2 outweighs any benefit associated with such practices, and because Defendants fraudulently
 3 concealed the defective nature of the Class Vehicles from consumers.

4 1334. Defendants' actions as set forth above occurred in the conduct of trade or
 5 commerce.

6 1335. Defendants' conduct proximately caused injuries to Plaintiffs and the other Class
 7 members.

8 1336. Plaintiffs and the other Class members were injured as a result of Defendants'
 9 conduct in that Plaintiffs and the other Class members overpaid for their Class Vehicles and did
 10 not receive the benefit of their bargain, and their Class Vehicles have suffered a diminution in
 11 value. These injuries are the direct and natural consequence of Defendants' misrepresentations
 12 and omissions.

13 1337. Pursuant to N.J. Stat. Ann. § 56:8-20, Plaintiffs will serve the New Jersey
 14 Attorney General with a copy of this Complaint.

15 **COUNT CXLV**

16 **Breach of Express Warranty**

17 **(New Jersey Statutes Annotated Section 12A:2-313)**

18 1338. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 19 forth herein.

20 1339. Defendants are and were at all relevant times merchants with respect to motor
 21 vehicles.

22 1340. In their Limited Warranties and in advertisements, brochures, and through other
 23 statements in the media, Defendants expressly warranted that they would repair or replace defects
 24 in material or workmanship free of charge if they became apparent during the warranty period.
 25 For example, the following language appears in all Class Vehicle Warranty booklets:

26 1. Toyota's warranty

27 *When Warranty Begins*

28 The warranty period begins on the vehicle's in-service date, which is the first date
 the vehicle is either delivered to an ultimate purchaser, leased, or used as a

company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

1341. Defendants' Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

1 1342. Defendants breached the express warranty to repair and adjust to correct defects
2 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
3 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
4 workmanship defects.

5 1343. In addition to these Limited Warranties, Defendants otherwise expressly
6 warranted several attributes, characteristics, and qualities of the CAN bus.

7 1344. These warranties are only a sampling of the numerous warranties that Defendants
8 made relating to safety, reliability, and operation. Generally these express warranties promise
9 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
10 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
11 on Defendants' websites, and in uniform statements provided by Defendants to be made by
12 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
13 These affirmations and promises were part of the basis of the bargain between the parties.

14 1345. These additional warranties were also breached because the Class Vehicles were
15 not fully operational, safe, or reliable (and remained so even after the problems were
16 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
17 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
18 conforming to these express warranties.

19 1346. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
20 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
21 the other Class members whole and because Defendants have failed and/or have refused to
22 adequately provide the promised remedies within a reasonable time.

23 1347. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
24 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
25 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
26 law.

27 1348. Also, as alleged in more detail herein, at the time that Defendants warranted and
28 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and

1 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
 2 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
 3 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
 4 pretenses.

5 1349. Moreover, many of the injuries flowing from the Class Vehicles cannot be
 6 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
 7 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
 8 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
 9 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
 10 would be insufficient to make Plaintiffs and the other Class members whole.

11 1350. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
 12 the other Class members assert as an additional and/or alternative remedy, as set forth in N.J. Stat.
 13 Ann § 12A:2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to
 14 the other Class members of the purchase price of all Class Vehicles currently owned for such
 15 other incidental and consequential damages as allowed under N.J. Stat. Ann. §§ 12A:2-711 and
 16 12A:2-608.

17 1351. Defendants were provided notice of these issues by the instant Complaint, and by
 18 other means before or within a reasonable amount of time after the allegations of Class Vehicle
 19 defects became public.

20 1352. As a direct and proximate result of Defendants’ breach of express warranties,
 21 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

22 **COUNT CXLVI**

23 **Breach of Implied Warranty of Merchantability** 24 **(New Jersey Statutes Annotated Section 12A:2-314)**

25 1353. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 26 forth herein.

27 1354. Defendants are and were at all relevant times merchants with respect to motor
 28 vehicles.

COUNT CXLVIII

**Fraudulent Concealment
(Based on New Jersey Law)**

1362. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1363. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

1364. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Class Vehicles they was selling were new, had no significant defects, and would perform and operate properly when driven in normal usage.

1365. Defendants knew these representations were false when made.

1366. The Class Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and defective CAN buses, as alleged herein.

1367. Defendants had a duty to disclose that these Class Vehicles were defective, unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other Class members relied on Defendants' material representations that the Class Vehicles they were purchasing were safe and free from defects.

1368. The aforementioned concealment was material because if it had been disclosed Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

1369. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants knew or recklessly disregarded that their representations were false because they knew the CAN buses were susceptible to hacking. Defendants intentionally made the false statements in order to

1 sell Class Vehicles.

2 1370. Plaintiffs and the other Class members relied on Defendants' reputations – along
3 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
4 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
5 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

6 1371. As a result of their reliance, Plaintiffs and the other Class members have been
7 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
8 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
9 Class Vehicles.

10 1372. Defendants' conduct was knowing, intentional, with malice, demonstrated a
11 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
12 members.

13 1373. Plaintiffs and the other Class members are therefore entitled to an award of
14 punitive damages.

15 **Claims Brought on Behalf of the New Mexico Class**

16 **COUNT CXLIX**

17 **Breach of Express Warranty**

18 **(New Mexico Statutes Annotated Section 55-2-313)**

19 1374. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
20 forth herein.

21 1375. Defendants are and were at all relevant times merchants with respect to motor
22 vehicles under N.M. Stat. Ann. § 55-2-104.

23 1376. In their Limited Warranties and in advertisements, brochures, and through other
24 statements in the media, Defendants expressly warranted that they would repair or replace defects
25 in material or workmanship free of charge if they became apparent during the warranty period.
26 For example, the following language appears in all Class Vehicle Warranty booklets:

27 1. Toyota's warranty

28 *When Warranty Begins*

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

1377. Defendants' Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was

1 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
2 equipped with a CAN bus from Defendants.

3 1378. Defendants breached the express warranty to repair and adjust to correct defects
4 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
5 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
6 workmanship defects.

7 1379. In addition to these Limited Warranties, Defendants otherwise expressly
8 warranted several attributes, characteristics, and qualities of the CAN bus.

9 1380. These warranties are only a sampling of the numerous warranties that Defendants
10 made relating to safety, reliability, and operation. Generally these express warranties promise
11 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
12 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
13 on Defendants' websites, and in uniform statements provided by Defendants to be made by
14 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
15 These affirmations and promises were part of the basis of the bargain between the parties.

16 1381. These additional warranties were also breached because the Class Vehicles were
17 not fully operational, safe, or reliable (and remained so even after the problems were
18 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
19 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
20 conforming to these express warranties.

21 1382. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
22 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
23 the other Class members whole and because Defendants have failed and/or have refused to
24 adequately provide the promised remedies within a reasonable time.

25 1383. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
26 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
27 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
28 law.

1384. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1385. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of “replacement or adjustments,” as many incidental and consequential damages have already been suffered due to Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies would be insufficient to make Plaintiffs and the other Class members whole.

1386. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in N.M. Stat. Ann. § 55-2-711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned and for such other incidental and consequential damages as allowed under N.M. Stat. Ann. §§ 55-2-711 and 55-2-608.

1387. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1388. As a direct and proximate result of Defendants’ breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CL

Breach of the Implied Warranty of Merchantability (New Mexico Statutes Annotated Section 55-2-314)

1389. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1390. Defendants are and were at all relevant times merchants with respect to motor

1 vehicles under N.M. Stat. Ann. § 55-2-104.

2 1391. A warranty that the Defective Vehicles were in merchantable condition was
3 implied by law in the instant transaction, pursuant to N.M. Stat. Ann. § 55-2-314.

4 1392. These Class Vehicles, when sold and at all times thereafter, were not in
5 merchantable condition and are not fit for the ordinary purpose for which cars are used.
6 Defendants were provided notice of these issues by numerous complaints filed against them,
7 including the instant Complaint, and by other means.

8 1393. As a direct and proximate result of Defendants' breach of the warranties of
9 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

10 **COUNT CLI**

11 **Breach of Contract/Common Law Warranty**
12 **(Based on New Mexico Law)**

13 1394. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
14 forth herein.

15 1395. To the extent Defendants' limited remedies are deemed not to be warranties under
16 New Mexico's Commercial Code, Plaintiffs, individually and on behalf of the other Class
17 members, plead in the alternative under common law warranty and contract law. Defendants
18 limited the remedies available to Plaintiffs and the other Class members to repairs and
19 adjustments needed to correct defects in materials or workmanship of any part supplied by
20 Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other
21 Class members.

22 1396. Defendants breached this warranty or contract obligation by failing to repair the
23 Class Vehicles, or to replace them.

24 1397. As a direct and proximate result of Defendants' breach of contract or common
25 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
26 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
27 and consequential damages, and other damages allowed by law.

COUNT CLII**Fraudulent Concealment
(Based on New Mexico Law)**

1398. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1399. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

1400. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Class Vehicles they was selling were new, had no significant defects, and would perform and operate properly when driven in normal usage.

1401. Defendants knew these representations were false when made.

1402. The Class Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and defective CAN buses, as alleged herein.

1403. Defendants had a duty to disclose that these Class Vehicles were defective, unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other Class members relied on Defendants' material representations that the Class Vehicles they were purchasing were safe and free from defects.

1404. The aforementioned concealment was material because if it had been disclosed Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

1405. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants knew or recklessly disregarded that their representations were false because they knew the CAN buses were susceptible to hacking. Defendants intentionally made the false statements in order to

1 sell Class Vehicles.

2 1406. Plaintiffs and the other Class members relied on Defendants' reputations – along
3 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
4 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
5 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

6 1407. As a result of their reliance, Plaintiffs and the other Class members have been
7 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
8 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
9 Class Vehicles.

10 1408. Defendants' conduct was knowing, intentional, with malice, demonstrated a
11 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
12 members.

13 1409. Plaintiffs and the other Class members are therefore entitled to an award of
14 punitive damages.

15 **COUNT CLIII**

16 **Violations of the New Mexico Unfair Trade Practices Act** 17 **(New Mexico Statutes Annotated Sections 57-12-1, *et seq.*)**

18 1410. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
19 forth herein.

20 1411. Defendants' above-described acts and omissions constitute unfair or deceptive
21 acts or practices under the New Mexico Unfair Trade Practices Act, N.M. Stat. Ann. §§ 57-12-1,
22 *et seq.* ("New Mexico UTPA").

23 1412. By failing to disclose and actively concealing the dangerous risk of hacking and
24 the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with CAN buses,
25 Defendants engaged in deceptive business practices prohibited by the New Mexico UTPA,
26 including (1) representing that Defective Vehicles have characteristics and benefits, which they
27 do not have, (2) representing that Defective Vehicles are of a particular standard, quality, and
28 grade when they are not, (3) using exaggeration as to a material fact and by doing so deceiving or

tending to deceive, (4) failing to state a material fact and by doing so deceiving or tending to deceive, and (5) representing that a transaction involving Defective Vehicles confers or involves rights, remedies, and obligations which it does not.

1413. As alleged above, Defendants made numerous material statements about the safety and reliability of Defective Vehicles that were either false or misleading. Each of these statements contributed to the deceptive context of TMC's and TMS's unlawful advertising and representations as a whole.

1414. Defendants took advantage of the lack of knowledge, ability, experience, and capacity of Plaintiffs and the Class to a grossly unfair degree. Defendants' actions resulted in a gross disparity between the value received and the price paid by Plaintiffs and the Class. Defendants' actions constitute unconscionable actions under § 57-12-2(E) of the New Mexico UTPA.

1415. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful acts and are, therefore, entitled to damages and other relief provided for under § 57-12-10 of the New Mexico UTPA. Because Defendants' conduct was committed willfully, Plaintiffs and the Class seek treble damages.

1416. Plaintiffs and the Class also seek court costs and attorneys' fees under § 57-12-10(C) of the New Mexico UTPA.

COUNT CLIV

Violations of the New Mexico Motor Vehicle Dealers Franchising Act (New Mexico Statutes Annotated Sections 57-16-1, et seq.)

1417. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1418. As alleged above, Defendants used false, misleading, and deceptive advertising in connection with their business in violation of the New Mexico Motor Vehicle Dealers Franchising Act, N.M. Stat. Ann. §§ 57-16-1, *et seq.* ("New Mexico MVDFA").

1419. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful acts and are, therefore, entitled to damages and other relief provided for under § 57-16-13 of the

1 New Mexico MVDFA. Because Defendants' conduct was committed maliciously, Plaintiffs and
2 the Class seek treble damages.

3 1420. Plaintiffs and the Class also seek court costs and attorneys' fees under § 57-16-13
4 of the New Mexico MVDFA.

5 **Claims Brought on Behalf of the New York Class**

6 **COUNT CLV**

7 **Violations of New York General Business Law Section 349**

8 **(New York General Business Law Section 349)**

9 1421. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 1422. New York's General Business Law § 349 makes unlawful "[d]eceptive acts or
12 practices in the conduct of any business, trade or commerce."

13 1423. In the course of Defendants' business, they willfully failed to disclose and
14 actively concealed the dangerous risk of CAN bus hacking in Class Vehicles as described above.
15 Accordingly, Defendants engaged in unfair methods of competition, unconscionable acts or
16 practices, and unfair or deceptive acts or practices as defined in N.Y. Gen. Bus. Law § 349,
17 including representing that Class Vehicles have characteristics, uses, benefits, and qualities which
18 they do not have; representing that Class Vehicles are of a particular standard and quality when
19 they are not; advertising Class Vehicles with the intent not to sell them as advertised; and
20 otherwise engaging in conduct likely to deceive.

21 1424. Defendants' actions as set forth above occurred in the conduct of trade or
22 commerce.

23 1425. Because Defendants' deception takes place in the context of automobile safety,
24 their deception affects the public interest. Further, Defendants' unlawful conduct constitutes
25 unfair acts or practices that have the capacity to deceive consumers, and that have a broad impact
26 on consumers at large.

27 1426. Defendants' conduct proximately caused injuries to Plaintiffs and the other Class
28 members.

1427. Plaintiffs and the other Class members were injured as a result of Defendants' conduct in that Plaintiffs and the other Class members overpaid for their Class Vehicles and did not receive the benefit of their bargain, and their Class Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendants' misrepresentations and omissions.

COUNT CLVI

Violations of New York General Business Law Section 350 (New York General Business Law Section 350)

1428. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1429. New York's General Business Law § 350 makes unlawful "[f]alse advertising in the conduct of any business, trade or commerce[.]" False advertising includes "advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect," taking into account "the extent to which the advertising fails to reveal facts material in the light of . . . representations [made] with respect to the commodity" N.Y. Gen. Bus. Law § 350-a. 818. Defendants caused to be made or disseminated through New York, through advertising, marketing, and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to Defendants, to be untrue and misleading to consumers, including Plaintiffs and the other Class members.

1430. Defendants have violated N.Y. Gen. Bus. Law § 350 because the misrepresentations and omissions regarding the dangerous risk of CAN bus hacking in Class Vehicles as described above, as well as the inherently defective nature of the CAN bus as designed and sold by Defendants, were material and likely to deceive a reasonable consumer.

1431. Plaintiffs and the other Class members have suffered injury, including the loss of money or property, as a result of Defendants' false advertising. In purchasing or leasing their Class Vehicles, Plaintiffs and the other Class members relied on the misrepresentations and/or omissions of Defendants with respect to the safety, quality, functionality, and reliability of the Class Vehicles. Defendants' representations turned out to be untrue because the CAN buses

1 installed in Class Vehicles are vulnerable to hacking and other failures as described hereinabove.
 2 Had Plaintiffs and the other Class members known this, they would not have purchased or leased
 3 their Class Vehicles and/or paid as much for them.

4 1432. Accordingly, Plaintiffs and the other Class members overpaid for their Class
 5 Vehicles and did not receive the benefit of the bargain for their Class Vehicles, which have also
 6 suffered diminution in value.

7 1433. Plaintiffs, individually and on behalf of the other Class members, request that this
 8 Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing
 9 their unfair, unlawful and/or deceptive practices. Plaintiffs and the other Class members are also
 10 entitled to recover their actual damages or \$500, whichever is greater. Because Defendants acted
 11 willfully or knowingly, Plaintiffs and the other Class members are entitled to recover three times
 12 actual damages, up to \$10,000.

13 **COUNT CLVII**

14 **Breach of Express Warranty** 15 **(New York Uniform Commercial Code Section 2-313)**

16 1434. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 17 forth herein.

18 1435. Defendants are and were at all relevant times merchants with respect to motor
 19 vehicles.

20 1436. In their Limited Warranties and in advertisements, brochures, and through other
 21 statements in the media, Defendants expressly warranted that they would repair or replace defects
 22 in material or workmanship free of charge if they became apparent during the warranty period.
 23 For example, the following language appears in all Class Vehicle Warranty booklets:

24 1. Toyota's warranty

25 *When Warranty Begins*

26 The warranty period begins on the vehicle's in-service date, which is the first date
 27 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
 28 company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for

1 parts and labor.

2 *Basic Warranty*

3 This warranty covers repairs and adjustments needed to correct defects in materials
4 or workmanship of any part supplied by Toyota Coverage is for 36 months or
36,000 miles, whichever occurs first

5 2. Ford's warranty

6 *KNOW WHEN YOUR WARRANTY BEGINS*

7 Your Warranty Start Date is the day you take delivery of your new vehicle or the
8 day it is first put into service

9 *QUICK REFERENCE: WARRANTY COVERAGE*

10 . . .

11 Your Bumper to Bumper Coverage lasts for three years - unless you drive more
12 than 36,000 miles before three years elapse.

13 *WHO PAYS FOR WARRANTY REPAIRS?*

14 You will not be charged for repairs covered by any applicable warranty during the
15 stated coverage periods

16 3. GM's warranty

17 *Warranty Period*

18 The warranty period for all coverages begins on the date the vehicle is first
19 delivered or put in use and ends at the expiration of the coverage period.

20 *Bumper-to-Bumper Coverage*

21 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
22

23 *No Charge*

24 Warranty repairs, including towing, parts, and labor, will be made at no charge.

25 *Repairs Covered*

26 This warranty covers repairs to correct any vehicle defect related to materials or
27 workmanship occurring during the warranty period. Needed repairs will be
28 performed using new or remanufactured parts.

1437. Defendants' Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

1438. Defendants breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Defendants. Defendants have not repaired

1 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
2 workmanship defects.

3 1439. In addition to these Limited Warranties, Defendants otherwise expressly
4 warranted several attributes, characteristics, and qualities of the CAN bus.

5 1440. These warranties are only a sampling of the numerous warranties that Defendants
6 made relating to safety, reliability, and operation. Generally these express warranties promise
7 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
8 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
9 on Defendants' websites, and in uniform statements provided by Defendants to be made by
10 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
11 These affirmations and promises were part of the basis of the bargain between the parties.

12 1441. These additional warranties were also breached because the Class Vehicles were
13 not fully operational, safe, or reliable (and remained so even after the problems were
14 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
15 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
16 conforming to these express warranties.

17 1442. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
18 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
19 the other Class members whole and because Defendants have failed and/or have refused to
20 adequately provide the promised remedies within a reasonable time.

21 1443. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
22 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
23 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
24 law.

25 1444. Also, as alleged in more detail herein, at the time that Defendants warranted and
26 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
27 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
28 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members

1 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
2 pretenses.

3 1445. Moreover, many of the injuries flowing from the Class Vehicles cannot be
4 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
5 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
6 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
7 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
8 would be insufficient to make Plaintiffs and the other Class members whole.

9 1446. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
10 the other Class members assert as an additional and/or alternative remedy, as set forth in N.Y.
11 U.C.C. § 2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to
12 the other Class members of the purchase price of all Class Vehicles currently owned for such
13 other incidental and consequential damages as allowed under N.Y. U.C.C. §§ 2-711 and 2-608.

14 1447. Defendants were provided notice of these issues by the instant Complaint, and by
15 other means before or within a reasonable amount of time after the allegations of Class Vehicle
16 defects became public.

17 1448. As a direct and proximate result of Defendants’ breach of express warranties,
18 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

19 **COUNT CLVIII**

20 **Breach of Implied Warranty of Merchantability** 21 **(New York Uniform Commercial Code Section 2-314)**

22 1449. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
23 forth herein.

24 1450. Defendants are and were at all relevant times merchants with respect to motor
25 vehicles.

26 1451. A warranty that the Class Vehicles were in merchantable condition is implied by
27 law in the instant transactions.

28 1452. These Class Vehicles, when sold and at all times thereafter, were not in

1 merchantable condition and are not fit for the ordinary purpose for which cars are used.
 2 Defendants were provided notice of these issues by numerous complaints filed against them,
 3 including the instant Complaint, and by other means.

4 1453. As a direct and proximate result of Defendants' breach of the warranties of
 5 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

6 **COUNT CLIX**

7 **Breach of Contract/Common Law Warranty**

8 **(Based on New York Law)**

9 1454. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 10 forth herein.

11 1455. To the extent Defendants' limited remedies are deemed not to be warranties under
 12 New York's Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
 13 plead in the alternative under common law warranty and contract law. Defendants limited the
 14 remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to
 15 correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted
 16 the quality or nature of those services to Plaintiffs and the other Class members.

17 1456. Defendants breached this warranty or contract obligation by failing to repair the
 18 Class Vehicles, or to replace them.

19 1457. As a direct and proximate result of Defendants' breach of contract or common
 20 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
 21 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
 22 and consequential damages, and other damages allowed by law.

23 **COUNT CLX**

24 **Fraudulent Concealment**

25 **(Based on New York Law)**

26 1458. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 27 forth herein.

28 1459. Defendants intentionally concealed the above-described material safety and

1 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
2 the other Class members information that is highly relevant to their purchasing decision.

3 1460. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
4 other forms of communication, including standard and uniform material provided with each car,
5 that the Class Vehicles they was selling were new, had no significant defects, and would perform
6 and operate properly when driven in normal usage.

7 1461. Defendants knew these representations were false when made.

8 1462. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
9 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
10 defective CAN buses, as alleged herein.

11 1463. Defendants had a duty to disclose that these Class Vehicles were defective,
12 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
13 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
14 Class members relied on Defendants' material representations that the Class Vehicles they were
15 purchasing were safe and free from defects.

16 1464. The aforementioned concealment was material because if it had been disclosed
17 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
18 would not have bought or leased those Vehicles at the prices they paid.

19 1465. The aforementioned representations were material because they were facts that
20 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
21 knew or recklessly disregarded that their representations were false because they knew the CAN
22 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
23 sell Class Vehicles.

24 1466. Plaintiffs and the other Class members relied on Defendants' reputations – along
25 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
26 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
27 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

28 1467. As a result of their reliance, Plaintiffs and the other Class members have been

1 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
 2 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
 3 Class Vehicles.

4 1468. Defendants' conduct was knowing, intentional, with malice, demonstrated a
 5 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
 6 members.

7 1469. Plaintiffs and the other Class members are therefore entitled to an award of
 8 punitive damages.

9 **Claims Brought on Behalf of the North Carolina Class**

10 **COUNT CLXI**

11 **Violations of the North Carolina Unfair and Deceptive Trade Practices Act**
 12 **(North Carolina General Statutes Sections 75-1.1, *et seq.*)**

13 1470. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 14 forth herein.

15 1471. North Carolina's Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat.
 16 §§ 75-1.1, *et seq.* ("NCUDTPA"), prohibits a person from engaging in "[u]nfair methods of
 17 competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting
 18 commerce[.]" The NCUDTPA provides a private right of action for any person injured "by reason
 19 of any act or thing done by any other person, firm or corporation in violation of" the NCUDTPA.
 20 N.C. Gen. Stat. § 75-16.

21 1472. Defendants' acts and practices complained of herein were performed in the course
 22 of Defendants' trade or business and thus occurred in or affected "commerce," as defined in N.C.
 23 Gen. Stat. § 75-1.1(b).

24 1473. In the course of Defendants' business, they willfully failed to disclose and
 25 actively concealed the dangerous risk of CAN bus hacking in Class Vehicles as described above.

26 1474. Accordingly, Defendants engaged in unlawful trade practices, including
 27 representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do
 28 not have; representing that Class Vehicles are of a particular standard and quality when they are

not; advertising Class Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

1475. Defendants' conduct proximately caused injuries to Plaintiffs and the other Class members.

1476. Defendants acted with willful and conscious disregard of the rights and safety of others, subjecting Plaintiffs and the other Class members to cruel and unjust hardship as a result, such that an award of punitive damages is appropriate.

1477. Plaintiffs and the other Class members were injured as a result of Defendants' conduct in that Plaintiffs and the other Class members overpaid for their Class Vehicles and did not receive the benefit of their bargain, and their Class Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendants' misrepresentations and omissions.

1478. Plaintiffs, individually and on behalf of the other Class members, seeks treble damages pursuant to N.C. Gen. Stat. § 75-16, and an award of attorneys' fees pursuant to N.C. Gen. Stat. § 75-16.1.

COUNT CLXII

Breach of Express Warranty

(North Carolina General Statutes Section 25-2-313)

1479. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1480. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1481. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota's warranty
When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

1482. Defendants' Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was

1 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
2 equipped with a CAN bus from Defendants.

3 1483. Defendants breached the express warranty to repair and adjust to correct defects
4 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
5 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
6 workmanship defects.

7 1484. In addition to these Limited Warranties, Defendants otherwise expressly
8 warranted several attributes, characteristics, and qualities of the CAN bus.

9 1485. These warranties are only a sampling of the numerous warranties that Defendants
10 made relating to safety, reliability, and operation. Generally these express warranties promise
11 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
12 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
13 on Defendants' websites, and in uniform statements provided by Defendants to be made by
14 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
15 These affirmations and promises were part of the basis of the bargain between the parties.

16 1486. These additional warranties were also breached because the Class Vehicles were
17 not fully operational, safe, or reliable (and remained so even after the problems were
18 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
19 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
20 conforming to these express warranties.

21 1487. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
22 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
23 the other Class members whole and because Defendants have failed and/or have refused to
24 adequately provide the promised remedies within a reasonable time.

25 1488. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
26 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
27 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
28 law.

1 1489. Also, as alleged in more detail herein, at the time that Defendants warranted and
2 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
3 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
4 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
5 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
6 pretenses.

7 1490. Moreover, many of the injuries flowing from the Class Vehicles cannot be
8 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
9 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
10 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
11 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
12 would be insufficient to make Plaintiffs and the other Class members whole.

13 1491. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
14 the other Class members assert as an additional and/or alternative remedy, as set forth in N.C.
15 Gen. Stat. § 25-2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs
16 and to the other Class members of the purchase price of all Class Vehicles currently owned for
17 such other incidental and consequential damages as allowed under N.C. Gen. Stat. §§ 25-2-711
18 and 25-2-608.

19 1492. Defendants were provided notice of these issues by the instant Complaint, and by
20 other means before or within a reasonable amount of time after the allegations of Class Vehicle
21 defects became public.

22 1493. As a direct and proximate result of Defendants’ breach of express warranties,
23 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

24 **COUNT CLXIII**

25 **Breach of Implied Warranty of Merchantability**
26 **(North Carolina General Statutes Section 25-2-314)**

27 1494. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
28 forth herein.

1 1495. Defendants are and were at all relevant times merchants with respect to motor
2 vehicles.

3 1496. A warranty that the Class Vehicles were in merchantable condition is implied by
4 law in the instant transactions.

5 1497. These Class Vehicles, when sold and at all times thereafter, were not in
6 merchantable condition and are not fit for the ordinary purpose for which cars are used.
7 Defendants were provided notice of these issues by numerous complaints filed against them,
8 including the instant Complaint, and by other means.

9 1498. As a direct and proximate result of Defendants' breach of the warranties of
10 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

11 **COUNT CLXIV**

12 **Breach of Contract/Common Law Warranty**
13 **(Based on North Carolina Law)**

14 1499. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
15 forth herein.

16 1500. To the extent Defendants' limited remedies are deemed not to be warranties under
17 North Carolina's Commercial Code, Plaintiffs, individually and on behalf of the other Class
18 members, plead in the alternative under common law warranty and contract law. Defendants
19 limited the remedies available to Plaintiffs and the other Class members to repairs and
20 adjustments needed to correct defects in materials or workmanship of any part supplied by
21 Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other
22 Class members.

23 1501. Defendants breached this warranty or contract obligation by failing to repair the
24 Class Vehicles, or to replace them.

25 1502. As a direct and proximate result of Defendants' breach of contract or common
26 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
27 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
28 and consequential damages, and other damages allowed by law.

COUNT CLXV

**Fraudulent Concealment
(Based on North Carolina Law)**

1503. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1504. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

1505. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Class Vehicles they was selling were new, had no significant defects, and would perform and operate properly when driven in normal usage.

1506. Defendants knew these representations were false when made.

1507. The Class Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and defective CAN buses, as alleged herein.

1508. Defendants had a duty to disclose that these Class Vehicles were defective, unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other Class members relied on Defendants' material representations that the Class Vehicles they were purchasing were safe and free from defects.

1509. The aforementioned concealment was material because if it had been disclosed Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

1510. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants knew or recklessly disregarded that their representations were false because they knew the CAN buses were susceptible to hacking. Defendants intentionally made the false statements in order to

1 sell Class Vehicles.

2 1511. Plaintiffs and the other Class members relied on Defendants' reputations – along
3 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
4 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
5 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

6 1512. As a result of their reliance, Plaintiffs and the other Class members have been
7 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
8 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
9 Class Vehicles.

10 1513. Defendants' conduct was knowing, intentional, with malice, demonstrated a
11 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
12 members.

13 1514. Plaintiffs and the other Class members are therefore entitled to an award of
14 punitive damages.

15 **Claims Brought on Behalf of the North Dakota Class**

16 **COUNT CLXVI**

17 **Breach of Express Warranty**

18 **(North Dakota Century Code Section 41-02-30)**

19 1515. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
20 forth herein.

21 1516. Defendants are and were at all relevant times merchants with respect to motor
22 vehicles.

23 1517. In their Limited Warranties and in advertisements, brochures, and through other
24 statements in the media, Defendants expressly warranted that they would repair or replace defects
25 in material or workmanship free of charge if they became apparent during the warranty period.
26 For example, the following language appears in all Class Vehicle Warranty booklets:

27 1. Toyota's warranty

28 *When Warranty Begins*

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

1518. Defendants' Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was

1 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
2 equipped with a CAN bus from Defendants.

3 1519. Defendants breached the express warranty to repair and adjust to correct defects
4 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
5 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
6 workmanship defects.

7 1520. In addition to these Limited Warranties, Defendants otherwise expressly
8 warranted several attributes, characteristics, and qualities of the CAN bus.

9 1521. These warranties are only a sampling of the numerous warranties that Defendants
10 made relating to safety, reliability, and operation. Generally these express warranties promise
11 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
12 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
13 on Defendants' websites, and in uniform statements provided by Defendants to be made by
14 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
15 These affirmations and promises were part of the basis of the bargain between the parties.

16 1522. These additional warranties were also breached because the Class Vehicles were
17 not fully operational, safe, or reliable (and remained so even after the problems were
18 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
19 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
20 conforming to these express warranties.

21 1523. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
22 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
23 the other Class members whole and because Defendants have failed and/or have refused to
24 adequately provide the promised remedies within a reasonable time.

25 1524. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
26 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
27 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
28 law.

1532. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

1533. These Class Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, and by other means.

1534. As a direct and proximate result of Defendants' breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT CLXVIII

**Violation of the North Dakota Consumer Fraud Act
(North Dakota Century Code Section 51-15-02)**

1535. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1536. The conduct of Defendants as set forth herein constitutes deceptive acts or practices, fraud, and misrepresentation, including, but not limited to, Defendants' manufacture and sale of vehicles with a defect that leaves them vulnerable to hacking and that lack an effective fail-safe mechanism which Defendants failed to adequately investigate, disclose and remedy, and Defendants' misrepresentations and omissions regarding the safety and reliability of their vehicles.

1537. Plaintiffs and the Class were injured as a result of Defendants' conduct. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value.

1538. Defendants' conduct proximately caused the injuries to Plaintiffs and the Class.

1539. Further, Defendants knowingly committed the conduct described above, and thus, under N.D. Cent. Code § 51-15-09, Defendants are liable to Plaintiffs and the Class for treble damages in amounts to be proven at trial, as well as attorneys' fees, costs, and disbursements.

COUNT CLXIX

**Breach of Contract/Common Law Warranty
(Based on North Dakota Law)**

1540. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1541. To the extent Defendants' limited remedies are deemed not to be warranties under North Dakota's Century Code, Plaintiffs, individually and on behalf of the other Class members, plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other Class members.

1542. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

1543. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT CLXX

**Fraudulent Concealment
(Based on North Dakota Law)**

1544. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1545. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

1546. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Class Vehicles they was selling were new, had no significant defects, and would perform

1 and operate properly when driven in normal usage.

2 1547. Defendants knew these representations were false when made.

3 1548. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
4 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
5 defective CAN buses, as alleged herein.

6 1549. Defendants had a duty to disclose that these Class Vehicles were defective,
7 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
8 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
9 Class members relied on Defendants' material representations that the Class Vehicles they were
10 purchasing were safe and free from defects.

11 1550. The aforementioned concealment was material because if it had been disclosed
12 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
13 would not have bought or leased those Vehicles at the prices they paid.

14 1551. The aforementioned representations were material because they were facts that
15 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
16 knew or recklessly disregarded that their representations were false because they knew the CAN
17 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
18 sell Class Vehicles.

19 1552. Plaintiffs and the other Class members relied on Defendants' reputations – along
20 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
21 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
22 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

23 1553. As a result of their reliance, Plaintiffs and the other Class members have been
24 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
25 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
26 Class Vehicles.

27 1554. Defendants' conduct was knowing, intentional, with malice, demonstrated a
28 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class

1 members.

2 1555. Plaintiffs and the other Class members are therefore entitled to an award of
3 punitive damages.

4 **Claims Brought on Behalf of the Ohio Class**

5 **COUNT CLXXI**

6 **Violations of the Consumer Sales Practices Act**
7 **(Ohio Revised Code Sections 1345.01, *et seq.*)**

8 1556. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
9 forth herein.

10 1557. Plaintiffs and the other Ohio Class members are “consumers” as defined by the
11 Ohio Consumer Sales Practices Act, Ohio Rev. Code § 1345.01 (“OCSPA”). Defendants are
12 “suppliers” as defined by the OCSPA. Plaintiffs’ and the other Ohio Class members’ purchases or
13 leases of Class Vehicles were “consumer transactions” as defined by the OCSPA.

14 1558. By failing to disclose and actively concealing the defects in the Class Vehicles,
15 Defendants engaged in deceptive business practices prohibited by the OCSPA, including
16 (1) representing that Class Vehicles have characteristics, uses, benefits, and qualities which they
17 do not have, (2) representing that Class Vehicles are of a particular standard, quality, and grade
18 when they are not, (3) advertising Class Vehicles with the intent not to sell them as advertised,
19 and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to
20 the consumer.

21 1559. As alleged above, Defendants made numerous material statements about the
22 benefits and characteristics of the Class Vehicles that were either false or misleading. Each of
23 these statements contributed to the deceptive context of Defendants’ unlawful advertising and
24 representations as a whole.

25 1560. Defendants knew that the CAN buses in the Class Vehicles were defectively
26 designed or manufactured because they were susceptible to hacking, and were not suitable for
27 their intended use. Defendants nevertheless failed to warn Plaintiffs about these defects despite
28 having a duty to do so.

1561. Defendants owed Plaintiffs a duty to disclose the defective nature of the CAN buses in the Class Vehicles, because Defendants:

1562. Possessed exclusive knowledge of the defects rendering the Class Vehicles more unreliable than similar vehicles;

1563. Intentionally concealed the defects associated with the CAN buses through their deceptive marketing campaign that they designed to hide the defects; and/or

1564. Made incomplete representations about the characteristics and performance of the Class Vehicles generally, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

1565. Defendants' unfair or deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers, including Plaintiffs, about the true performance and characteristics of the Class Vehicles.

1566. As a result of their violations of the OCSPA detailed above, Defendants caused actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs currently owns or leases, or within the class period has owned or leased, a Class Vehicle that is defective. Defects associated with the CAN bus have caused the value of Class Vehicles to decrease.

1567. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful acts and are, therefore, entitled to damages and other relief as provided under the OCSPA.

1568. Plaintiffs also seeks court costs and attorneys' fees as a result of Defendants' violation of the OCSPA as provided in Ohio Rev. Code § 1345.09.

COUNT CLXXII

**Breach of Express Warranty
(Ohio Revised Code Section 1302.26)**

1569. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1570. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1571. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

1 *Repairs Covered*

2 This warranty covers repairs to correct any vehicle defect related to materials or
3 workmanship occurring during the warranty period. Needed repairs will be
4 performed using new or remanufactured parts.

5 1572. Defendants' Limited Warranties, as well as advertisements, brochures, and other
6 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
7 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
8 equipped with a CAN bus from Defendants.

9 1573. Defendants breached the express warranty to repair and adjust to correct defects
10 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
11 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
12 workmanship defects.

13 1574. In addition to these Limited Warranties, Defendants otherwise expressly
14 warranted several attributes, characteristics, and qualities of the CAN bus.

15 1575. These warranties are only a sampling of the numerous warranties that Defendants
16 made relating to safety, reliability, and operation. Generally these express warranties promise
17 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
18 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
19 on Defendants' websites, and in uniform statements provided by Defendants to be made by
20 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
21 These affirmations and promises were part of the basis of the bargain between the parties.

22 1576. These additional warranties were also breached because the Class Vehicles were
23 not fully operational, safe, or reliable (and remained so even after the problems were
24 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
25 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
26 conforming to these express warranties.

27 1577. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
28 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
29 the other Class members whole and because Defendants have failed and/or have refused to

adequately provide the promised remedies within a reasonable time.

1578. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1579. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1580. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of “replacement or adjustments,” as many incidental and consequential damages have already been suffered due to Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies would be insufficient to make Plaintiffs and the other Class members whole.

1581. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and the other Class members assert as an additional and/or alternative remedy, as set forth in Ohio Rev. Code § 1302.66, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the other Class members of the purchase price of all Class Vehicles currently owned for such other incidental and consequential damages as allowed under Ohio Rev. Code §§ 1302.66 and 1302.85.

1582. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1583. As a direct and proximate result of Defendants’ breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CLXXIII

**Breach of Implied Warranty in Tort
(Based on Ohio Law)**

1584. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1585. The Class Vehicles contained a design defect, namely, a CAN bus that is vulnerable to hacking and enables the commandeering of the vehicle by a third party, as detailed herein more fully.

1586. The design, manufacturing, and/or assembly defect existed at the time these Class Vehicles containing the CAN buses left the hands of Defendants.

1587. Based upon the dangerous product defect and their certainty to occur, Defendants failed to meet the expectations of a reasonable consumer. The Class Vehicles failed their ordinary, intended use because the Class Vehicles do not function as a reasonable consumer would expect. Moreover, it presents a serious danger to Plaintiffs and the other Class members that cannot be eliminated without significant cost.

1588. The design defect in the CAN buses in these Class Vehicles was the direct and proximate cause of economic damages to Plaintiffs, as well as damages incurred or to be incurred by each of the other Class members.

COUNT CLXXIV

**Breach of Contract
(Based on Ohio Law)**

1589. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1590. To the extent Defendants' limited remedies are deemed not to be warranties under Ohio law, Plaintiffs plead in the alternative under common law contract law. Defendants limited the remedies available to Plaintiffs and the Class to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs. Defendants breached this contract obligation by

1 failing to repair the defective Class Vehicles, or to replace them.

2 1591. As a direct and proximate result of Defendants' breach of contract, Plaintiffs and
3 the Class have been damaged in an amount to be proven at trial, which shall include, but is not
4 limited to, all compensatory damages, incidental and consequential damages, and other damages
5 allowed by law.

6 **COUNT CLXXV**

7 **Fraudulent Concealment**

8 **(Based on Ohio Law)**

9 1592. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 1593. Defendants intentionally concealed the above-described material safety and
12 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
13 the other Class members information that is highly relevant to their purchasing decision.

14 1594. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
15 other forms of communication, including standard and uniform material provided with each car,
16 that the Class Vehicles they was selling were new, had no significant defects, and would perform
17 and operate properly when driven in normal usage.

18 1595. Defendants knew these representations were false when made.

19 1596. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
20 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
21 defective CAN buses, as alleged herein.

22 1597. Defendants had a duty to disclose that these Class Vehicles were defective,
23 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
24 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
25 Class members relied on Defendants' material representations that the Class Vehicles they were
26 purchasing were safe and free from defects.

27 1598. The aforementioned concealment was material because if it had been disclosed
28 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or

1 would not have bought or leased those Vehicles at the prices they paid.

2 1599. The aforementioned representations were material because they were facts that
3 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
4 knew or recklessly disregarded that their representations were false because they knew the CAN
5 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
6 sell Class Vehicles.

7 1600. Plaintiffs and the other Class members relied on Defendants' reputations – along
8 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
9 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
10 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

11 1601. As a result of their reliance, Plaintiffs and the other Class members have been
12 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
13 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
14 Class Vehicles.

15 1602. Defendants' conduct was knowing, intentional, with malice, demonstrated a
16 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
17 members.

18 1603. Plaintiffs and the other Class members are therefore entitled to an award of
19 punitive damages.

20 **Claims Brought on Behalf of the Oklahoma Class**

21 **COUNT CLXXVI**

22 **Violation of Oklahoma Consumer Protection Act**
23 **(Oklahoma Statutes title 15 Sections 751, et seq.)**

24 1604. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
25 forth herein.

26 1605. The conduct of Defendants as set forth herein constitutes unfair or deceptive acts
27 or practices, including, but not limited to, Defendants' manufacture and sale of vehicles that are
28 susceptible to hacking and lack effective fail-safe mechanisms, which Defendants failed to

adequately investigate, disclose and remedy, and their misrepresentations and omissions regarding the safety and reliability of their vehicles.

1606. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1607. Defendants' actions impact the public interest because Plaintiffs were injured in exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a result of Defendants' generalized course of deception. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business.

1608. Plaintiffs and the Class were injured as a result of Defendants' conduct. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value.

1609. Defendants' conduct proximately caused the injuries to Plaintiffs and the Class.

1610. Defendants are liable to Plaintiffs and the Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages.

1611. Pursuant to Okla. Stat. tit. 15 § 751, Plaintiffs will serve the Oklahoma Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.

COUNT CLXXVII

Violation of Oklahoma Deceptive Trade Practices Act (78 Oklahoma Statutes Annotated Sections 51, et seq.)

1612. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1613. The conduct of Defendants as set forth herein constitutes unfair or deceptive acts or practices, including, but not limited to, Defendants' manufacture and sale of vehicles that are susceptible to hacking and lack effective fail-safe mechanisms, which Defendants failed to adequately investigate, disclose and remedy, and their misrepresentations and omissions regarding the safety and reliability of their vehicles.

1614. Defendants' actions as set forth above occurred in the conduct of trade or commerce.

1615. Defendants' actions impact the public interest because Plaintiffs were injured in exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a result of Defendants' generalized course of deception. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business.

1616. Plaintiffs and the Class were injured as a result of Defendants' conduct. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value.

1617. Defendants' conduct proximately caused the injuries to Plaintiffs and the Class.

1618. Defendants are liable to Plaintiffs and the Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages.

1619. Pursuant to Okla. Stat. tit. 78 § 51, Plaintiffs will serve the Oklahoma Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.

COUNT CLXXVIII

Breach of Express Warranty

(12A Oklahoma Statutes Annotated Section 2-313)

1620. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1621. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1622. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for

1 parts and labor.

2 *Basic Warranty*

3 This warranty covers repairs and adjustments needed to correct defects in materials
4 or workmanship of any part supplied by Toyota Coverage is for 36 months or
36,000 miles, whichever occurs first

5 2. Ford's warranty

6 *KNOW WHEN YOUR WARRANTY BEGINS*

7 Your Warranty Start Date is the day you take delivery of your new vehicle or the
8 day it is first put into service

9 *QUICK REFERENCE: WARRANTY COVERAGE*

10 . . .

11 Your Bumper to Bumper Coverage lasts for three years - unless you drive more
12 than 36,000 miles before three years elapse.

13 *WHO PAYS FOR WARRANTY REPAIRS?*

14 You will not be charged for repairs covered by any applicable warranty during the
15 stated coverage periods

16 3. GM's warranty

17 *Warranty Period*

18 The warranty period for all coverages begins on the date the vehicle is first
19 delivered or put in use and ends at the expiration of the coverage period.

20 *Bumper-to-Bumper Coverage*

21 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
22

23 *No Charge*

24 Warranty repairs, including towing, parts, and labor, will be made at no charge.

25 *Repairs Covered*

26 This warranty covers repairs to correct any vehicle defect related to materials or
27 workmanship occurring during the warranty period. Needed repairs will be
28 performed using new or remanufactured parts.

1623. Defendants' Limited Warranties, as well as advertisements, brochures, and other
statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
equipped with a CAN bus from Defendants.

1624. Defendants breached the express warranty to repair and adjust to correct defects
in materials and workmanship of any part supplied by Defendants. Defendants have not repaired

1 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
2 workmanship defects.

3 1625. In addition to these Limited Warranties, Defendants otherwise expressly
4 warranted several attributes, characteristics, and qualities of the CAN bus.

5 1626. These warranties are only a sampling of the numerous warranties that Defendants
6 made relating to safety, reliability, and operation. Generally these express warranties promise
7 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
8 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
9 on Defendants' websites, and in uniform statements provided by Defendants to be made by
10 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
11 These affirmations and promises were part of the basis of the bargain between the parties.

12 1627. These additional warranties were also breached because the Class Vehicles were
13 not fully operational, safe, or reliable (and remained so even after the problems were
14 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
15 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
16 conforming to these express warranties.

17 1628. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
18 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
19 the other Class members whole and because Defendants have failed and/or have refused to
20 adequately provide the promised remedies within a reasonable time.

21 1629. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
22 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
23 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
24 law.

25 1630. Also, as alleged in more detail herein, at the time that Defendants warranted and
26 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
27 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
28 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members

1 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
2 pretenses.

3 1631. Moreover, many of the injuries flowing from the Class Vehicles cannot be
4 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
5 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
6 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
7 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
8 would be insufficient to make Plaintiffs and the other Class members whole.

9 1632. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
10 and the Class assert as an additional and/or alternative remedy, as set forth in 12A Okla. Stat.
11 Ann. § 2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the
12 Class of the purchase price of all vehicles currently owned.

13 1633. Defendants were provided notice of these issues by the instant Complaint, and by
14 other means before or within a reasonable amount of time after the allegations of Class Vehicle
15 defects became public.

16 1634. As a direct and proximate result of Defendants’ breach of express warranties,
17 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

18 **COUNT CLXXIX**

19 **Breach of the Implied Warranty of Merchantability**
20 **(12A Oklahoma Statutes Annotated Section 2-314)**

21 1635. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
22 forth herein.

23 1636. Defendants are and were at all relevant times merchants with respect to motor
24 vehicles.

25 1637. A warranty that the Defective Vehicles were in merchantable condition is implied
26 by law in the instant transactions, pursuant to 12A Okla. Stat. Ann. § 2-314.

27 1638. These vehicles, when sold and at all times thereafter, were not in merchantable
28 condition and are not fit for the ordinary purpose for which cars are used. Defendants were

provided notice of these issues by numerous complaints filed against them, including the instant Complaint, and by other means.

1639. Plaintiffs and the Class have had sufficient dealings with either the Defendants or their agents (dealerships) to establish privity of contract between Plaintiffs and the Class. Notwithstanding this, privity is not required in this case because Plaintiffs and the Class are intended third-party beneficiaries of contracts between Defendants and their dealers; specifically, they are the intended beneficiaries of Defendants' implied warranties. The dealers were not intended to be the ultimate consumers of the Defective Vehicles and have no rights under the warranty agreements provided with the Defective Vehicles; the warranty agreements were designed for and intended to benefit the ultimate consumers only. Finally, privity is also not required because Plaintiffs' and Class members' vehicles are dangerous instrumentalities due to the aforementioned defects and nonconformities.

1640. As a direct and proximate result of Defendants' breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT CLXXX

Breach of Contract/Common Law Warranty (Based on Oklahoma Law)

1641. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1642. To the extent Defendants' limited remedies are deemed not to be warranties under Oklahoma's Commercial Code, Plaintiffs, individually and on behalf of the other Class members, plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other Class members.

1643. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

1644. As a direct and proximate result of Defendants' breach of contract or common

1 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
2 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
3 and consequential damages, and other damages allowed by law.

4 **COUNT CLXXXI**

5 **Fraudulent Concealment**
6 **(Based on Oklahoma Law)**

7 1645. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
8 forth herein.

9 1646. Defendants intentionally concealed the above-described material safety and
10 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
11 the other Class members information that is highly relevant to their purchasing decision.

12 1647. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
13 other forms of communication, including standard and uniform material provided with each car,
14 that the Class Vehicles they was selling were new, had no significant defects, and would perform
15 and operate properly when driven in normal usage.

16 1648. Defendants knew these representations were false when made.

17 1649. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
18 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
19 defective CAN buses, as alleged herein.

20 1650. Defendants had a duty to disclose that these Class Vehicles were defective,
21 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
22 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
23 Class members relied on Defendants' material representations that the Class Vehicles they were
24 purchasing were safe and free from defects.

25 1651. The aforementioned concealment was material because if it had been disclosed
26 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
27 would not have bought or leased those Vehicles at the prices they paid.

28 1652. The aforementioned representations were material because they were facts that

1 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
 2 knew or recklessly disregarded that their representations were false because they knew the CAN
 3 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
 4 sell Class Vehicles.

5 1653. Plaintiffs and the other Class members relied on Defendants' reputations – along
 6 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
 7 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
 8 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

9 1654. As a result of their reliance, Plaintiffs and the other Class members have been
 10 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
 11 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
 12 Class Vehicles.

13 1655. Defendants' conduct was knowing, intentional, with malice, demonstrated a
 14 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
 15 members.

16 1656. Plaintiffs and the other Class members are therefore entitled to an award of
 17 punitive damages.

18 **Claims Brought on Behalf of the Oregon Class**

19 **COUNT CLXXXII**

20 **Violation of the Oregon Unlawful Trade Practices Act** 21 **(Oregon Revised Statutes Sections 646.605, *et seq.*)**

22 1657. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 23 forth herein.

24 1658. The Oregon Unfair Trade Practices Act ("OUTPA") prohibits a person from, in the
 25 course of the person's business, doing any of the following: "(e) Represent[ing] that . . . goods . . .
 26 have . . . characteristics . . . uses, benefits, . . . or qualities that they do not have; (g) Represent[ing] that
 27 . . . goods . . . are of a particular standard [or] quality . . . if they are of another; and (i) Advertis[ing]
 28 . . . goods or services with intent not to provide them as advertised." Or. Rev. Stat. § 646.608(1).

1 1659. Defendants are persons within the meaning of Or. Rev. Stat. § 646.605(4).

2 1660. The Defective Vehicles at issue are “goods” obtained primarily for personal
3 family or household purposes within the meaning of Or. Rev. Stat. § 646.605(6).

4 1661. In the course of Defendants’ business, they willfully failed to disclose and
5 actively concealed the dangerous risk of hacking and the lack of adequate fail-safe mechanisms in
6 Defective Vehicles equipped with CAN buses as described above. Accordingly, Defendants
7 engaged in unlawful trade practices, including representing that Defective Vehicles have
8 characteristics, uses, benefits, and qualities which they do not have; representing that Defective
9 Vehicles are of a particular standard and quality when they are not; and advertising Defective
10 Vehicles with the intent not to sell them as advertised. Defendants knew or should have known
11 that their conduct violated the OUTPA.

12 1662. As a result of these unlawful trade practices, Plaintiffs have suffered ascertainable
13 loss.

14 1663. Defendants engaged in a deceptive trade practice when they failed to disclose
15 material information concerning the vehicles that was known to Defendants at the time of the
16 sale. Defendants deliberately withheld the information about the vehicles’ susceptibility to
17 hacking in order to ensure that consumers would purchase their vehicles and to induce the
18 consumer to enter into a transaction.

19 1664. The susceptibility of the vehicles to hacking and their lack of a fail-safe
20 mechanism were material to Plaintiffs and the Class. Had Plaintiffs and the Class known that their
21 vehicles had these serious safety defects, they would not have purchased their vehicles.

22 1665. Plaintiffs and the Class suffered ascertainable loss caused by Defendants’ failure
23 to disclose material information. Plaintiffs and the Class overpaid for their vehicles and did not
24 receive the benefit of their bargain. The value of their Vehicles has diminished now that the safety
25 issues have come to light, and Plaintiffs and the Class own vehicles that are not safe.

26 1666. Plaintiffs are entitled to recover the greater of actual damages or \$200 pursuant to
27 Or. Rev. Stat. § 646.638(1). Plaintiffs are also entitled to punitive damages because Defendants
28 engaged in conduct amounting to a particularly aggravated, deliberate disregard of the rights of

1 others.

2 1667. Pursuant to Or. Rev. Stat. § 646.638(2), Plaintiffs will mail a copy of the
3 complaint to Oregon's attorney general.

4 **COUNT CLXXXIII**

5 **Breach of the Implied Warranty of Merchantability**
6 **(Oregon Revised Statutes Section 72.3140)**

7 1668. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
8 forth herein.

9 1669. Defendants are and were at all relevant times merchants with respect to motor
10 vehicles.

11 1670. A warranty that the Class Vehicles were in merchantable condition is implied by
12 law in the instant transactions.

13 1671. These Class Vehicles, when sold and at all times thereafter, were not in
14 merchantable condition and are not fit for the ordinary purpose for which cars are used.
15 Defendants were provided notice of these issues by numerous complaints filed against them,
16 including the instant Complaint, and by other means.

17 1672. As a direct and proximate result of Defendants' breach of the warranties of
18 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

19 **COUNT CLXXXIV**

20 **Fraudulent Concealment**
21 **(Based on Oregon Law)**

22 1673. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
23 forth herein.

24 1674. Defendants intentionally concealed the above-described material safety and
25 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
26 the other Class members information that is highly relevant to their purchasing decision.

27 1675. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
28 other forms of communication, including standard and uniform material provided with each car,

1 that the Class Vehicles they was selling were new, had no significant defects, and would perform
2 and operate properly when driven in normal usage.

3 1676. Defendants knew these representations were false when made.

4 1677. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
5 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
6 defective CAN buses, as alleged herein.

7 1678. Defendants had a duty to disclose that these Class Vehicles were defective,
8 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
9 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
10 Class members relied on Defendants' material representations that the Class Vehicles they were
11 purchasing were safe and free from defects.

12 1679. The aforementioned concealment was material because if it had been disclosed
13 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
14 would not have bought or leased those Vehicles at the prices they paid.

15 1680. The aforementioned representations were material because they were facts that
16 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
17 knew or recklessly disregarded that their representations were false because they knew the CAN
18 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
19 sell Class Vehicles.

20 1681. Plaintiffs and the other Class members relied on Defendants' reputations – along
21 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
22 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
23 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

24 1682. As a result of their reliance, Plaintiffs and the other Class members have been
25 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
26 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
27 Class Vehicles.

28 1683. Defendants' conduct was knowing, intentional, with malice, demonstrated a

1 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
2 members.

3 1684. Plaintiffs and the other Class members are therefore entitled to an award of
4 punitive damages.

5 **Claims Brought on Behalf of the Pennsylvania Class**

6 **COUNT CLXXXV**

7 **Violations of the Unfair Trade Practices and Consumer Protection Law**

8 **(Pennsylvania Statutes Annotated Sections 201-1, *et seq.*)**

9 1685. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 1686. By failing to disclose and actively concealing the defects in the Class Vehicles,
12 Defendants engaged in deceptive business practices prohibited by the Pennsylvania Unfair Trade
13 Practices and Consumer Protection Law, Pa. Stat. Ann. §§ 201-1, *et seq.* (“UTPCPL”), including
14 (1) representing that Class Vehicles have characteristics, uses, benefits, and qualities which they
15 do not have, (2) representing that Class Vehicles are of a particular standard, quality, and grade
16 when they are not, (3) advertising Class Vehicles with the intent not to sell them as advertised,
17 and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to
18 the consumer.

19 1687. As alleged above, Defendants made numerous material statements about the
20 benefits and characteristics of the Class Vehicles that were either false or misleading. Each of
21 these statements contributed to the deceptive context of Defendants’ unlawful advertising and
22 representations as a whole.

23 1688. Defendants knew that the CAN buses in the Class Vehicles were defectively
24 designed or manufactured, were susceptible to hacking, and were not suitable for their intended
25 use. Defendants nevertheless failed to warn Plaintiffs about these defects despite having a duty to
26 do so.

27 1689. Defendants owed Plaintiffs a duty to disclose the defective nature of the Class
28 Vehicles, because Defendants:

1 1690. Possessed exclusive knowledge of the defects rendering the Class Vehicles more
2 unreliable than similar vehicles;

3 1691. Intentionally concealed the defects associated with the CAN buses through their
4 deceptive marketing campaign and recall program that they designed to hide the defects in the
5 Class Vehicles; and/or

6 1692. Made incomplete representations about the characteristics and performance of the
7 Class Vehicles generally, while purposefully withholding material facts from Plaintiffs that
8 contradicted these representations.

9 1693. Defendants' unfair or deceptive acts or practices were likely to and did in fact
10 deceive reasonable consumers, including Plaintiffs, about the true performance and characteristics
11 of the Class Vehicles.

12 1694. As a result of their violations of the UTPCPL detailed above, Defendants caused
13 actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs
14 currently own or lease, or within the class period have owned or leased, a Class Vehicle that is
15 defective. Defects associated with the CAN buses have caused the value of Class Vehicles to
16 decrease.

17 1695. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful
18 acts and are, therefore, entitled to damages and other relief as provided under the UTPCPL,
19 including treble damages.

20 1696. Plaintiffs also seeks court costs and attorneys' fees as a result of Defendants'
21 violation of the UTPCPL as provided in Pa. Stat. Ann. § 201-9.2.

22 **COUNT CLXXXVI**

23 **Breach of Express Warranty**

24 **(13 Pennsylvania Statutes Annotated Section 2313)**

25 1697. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
26 forth herein.

27 1698. Defendants are and were at all relevant times merchants with respect to motor
28 vehicles under 13 Pa. Stat. Ann. § 2104.

1699. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

1 *Repairs Covered*

2 This warranty covers repairs to correct any vehicle defect related to materials or
3 workmanship occurring during the warranty period. Needed repairs will be
4 performed using new or remanufactured parts.

5 1700. Defendants' Limited Warranties, as well as advertisements, brochures, and other
6 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
7 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
8 equipped with a CAN bus from Defendants.

9 1701. Defendants breached the express warranty to repair and adjust to correct defects
10 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
11 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
12 workmanship defects.

13 1702. In addition to these Limited Warranties, Defendants otherwise expressly
14 warranted several attributes, characteristics, and qualities of the CAN bus.

15 1703. These warranties are only a sampling of the numerous warranties that Defendants
16 made relating to safety, reliability, and operation. Generally these express warranties promise
17 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
18 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
19 on Defendants' websites, and in uniform statements provided by Defendants to be made by
20 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
21 These affirmations and promises were part of the basis of the bargain between the parties.

22 1704. These additional warranties were also breached because the Class Vehicles were
23 not fully operational, safe, or reliable (and remained so even after the problems were
24 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
25 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
26 conforming to these express warranties.

27 1705. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
28 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
29 the other Class members whole and because Defendants have failed and/or have refused to

adequately provide the promised remedies within a reasonable time.

1706. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1707. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1708. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of “replacement or adjustments,” as many incidental and consequential damages have already been suffered due to Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies would be insufficient to make Plaintiffs and the other Class members whole.

1709. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and the other Class members assert as an additional and/or alternative remedy, as set forth in 13 Pa. Stat. Ann. § 2711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the other Class members of the purchase price of all Class Vehicles currently owned and for such other incidental and consequential damages as allowed under 13 Pa. Stat. Ann. §§ 2711 and 2608.

1710. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1711. As a direct and proximate result of Defendants’ breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CLXXXVII

**Breach of Implied Warranty of Merchantability
(13 Pennsylvania Statutes Annotated Section 2314)**

1712. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1713. Defendants are and were at all relevant times merchants with respect to motor vehicles under 13 Pa. Stat. Ann. § 2104.

1714. A warranty that the Class Vehicles were in merchantable condition was implied by law in the instant transactions, pursuant to 13 Pa. Stat. Ann. § 2314.

1715. These Class Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, and by other means.

1716. As a direct and proximate result of Defendants' breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT CLXXXVIII

**Breach of Contract/Common Law Warranty
(Based on Pennsylvania Law)**

1717. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1718. To the extent Defendants' limited remedies are deemed not to be warranties under Pennsylvania's Commercial Code, Plaintiffs, individually and on behalf of the other Class members, plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other Class members.

1719. Defendants breached this warranty or contract obligation by failing to repair the

1 Class Vehicles, or to replace them.

2 1720. As a direct and proximate result of Defendants' breach of contract or common
3 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
4 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
5 and consequential damages, and other damages allowed by law.

6 **COUNT CLXXXIX**

7 **Fraudulent Concealment**
8 **(Based on Pennsylvania Law)**

9 1721. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 1722. Defendants intentionally concealed the above-described material safety and
12 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
13 the other Class members information that is highly relevant to their purchasing decision.

14 1723. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
15 other forms of communication, including standard and uniform material provided with each car,
16 that the Class Vehicles they was selling were new, had no significant defects, and would perform
17 and operate properly when driven in normal usage.

18 1724. Defendants knew these representations were false when made.

19 1725. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
20 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
21 defective CAN buses, as alleged herein.

22 1726. Defendants had a duty to disclose that these Class Vehicles were defective,
23 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
24 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
25 Class members relied on Defendants' material representations that the Class Vehicles they were
26 purchasing were safe and free from defects.

27 1727. The aforementioned concealment was material because if it had been disclosed
28 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or

1 would not have bought or leased those Vehicles at the prices they paid.

2 1728. The aforementioned representations were material because they were facts that
3 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
4 knew or recklessly disregarded that their representations were false because they knew the CAN
5 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
6 sell Class Vehicles.

7 1729. Plaintiffs and the other Class members relied on Defendants' reputations – along
8 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
9 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
10 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

11 1730. As a result of their reliance, Plaintiffs and the other Class members have been
12 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
13 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
14 Class Vehicles.

15 1731. Defendants' conduct was knowing, intentional, with malice, demonstrated a
16 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
17 members.

18 1732. Plaintiffs and the other Class members are therefore entitled to an award of
19 punitive damages.

20 **Claims Brought on Behalf of the Rhode Island Class**

21 **COUNT CXC**

22 **Violation of the Rhode Island Unfair Trade Practices and Consumer Protection Act** 23 **(Rhode Island General Laws Sections 6-13.1, et seq.)**

24 1733. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
25 forth herein.

26 1734. Plaintiffs are persons who purchase or lease goods primarily for personal, family,
27 or household purposes within the meaning of R.I. Gen. Laws § 6-13.1-5.2(a).

28 1735. Rhode Island's Unfair Trade Practices and Consumer Protection Act

1 (“UTPCPA”) prohibits “unfair or deceptive acts or practices in the conduct of any trade or
2 commerce” including: “(v) Representing that goods or services have sponsorship, approval,
3 characteristics, ingredients, uses, benefits, or quantities that they do not have”; “(vii) Representing
4 that goods or services are of a particular standard, quality, or grade . . . , if they are of another”;
5 “(ix) Advertising goods or services with intent not to sell them as advertised”; “(xii) Engaging in
6 any other conduct that similarly creates a likelihood of confusion or of misunderstanding”;
7 “(xiii) Engaging in any act or practice that is unfair or deceptive to the consumer”; and “(xiv)
8 Using any other methods, acts or practices which mislead or deceive members of the public in a
9 material respect.” R.I. Gen. Laws § 6-13.1-1(6).

10 1736. In the course of Defendants’ business, they willfully failed to disclose and
11 actively concealed the dangerous risk of hacking and the lack of adequate fail-safe mechanisms in
12 Defective Vehicles equipped with CAN buses as described above. Accordingly, Defendants
13 engaged in unlawful trade practices, including representing that Defective Vehicles have
14 characteristics, uses, benefits, and qualities which they do not have; representing that Defective
15 Vehicles are of a particular standard and quality when they are not; advertising Defective
16 Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely
17 to deceive.

18 1737. Defendants’ actions as set forth above occurred in the conduct of trade or
19 commerce.

20 1738. Plaintiffs suffered ascertainable loss of money as a result of Defendants’ violation
21 of the UTPCPA.

22 1739. Plaintiffs and the Class were injured as a result of Defendants’ conduct in that
23 Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain,
24 and their vehicles have suffered a diminution in value. These injuries are the direct and natural
25 consequence of Defendants’ misrepresentations and omissions.

26 1740. Accordingly, Plaintiffs are entitled to recover the greater of actual damages or
27 \$200 pursuant to R.I. Gen. Laws § 6-13.1-5.2(a).

28

COUNT CXCI

**Breach of the Implied Warranty of Merchantability
(Rhode Island General Laws Section 6A-2-314)**

1741. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1742. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1743. A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.

1744. These Class Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, and by other means.

1745. As a direct and proximate result of Defendants' breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

Claims Brought on Behalf of the South Carolina Class

COUNT CXCII

**Breach of the Implied Warranty of Merchantability
(South Carolina Code Section 36-2-314)**

1746. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1747. Defendants are and were at all relevant times merchants with respect to motor vehicles under S.C. Code § 36-2-314.

1748. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the instant transaction, pursuant to S.C. Code § 36-2-314.

1749. These Class Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Defendants were provided notice of these issues by numerous complaints filed against them,

1 including the instant Complaint, and by other means.

2 1750. As a direct and proximate result of Defendants' breach of the warranties of
3 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

4 **COUNT CXCVIII**

5 **Violations of the South Carolina Unfair Trade Practices Act**
6 **(South Carolina Code Annotated Sections 39-5-10, *et seq.*)**

7 1751. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
8 forth herein.

9 1752. Defendants are "persons" under S.C. Code Ann. § 39-5-10.

10 1753. Defendants both participated in unfair or deceptive acts or practices that violated
11 the South Carolina Unfair Trade Practices Act (the "Act"), S.C. Code Ann. §§ 39-5-10, *et seq.*, as
12 described above and below. Defendants each are directly liable for these violations of law. TMC
13 also is liable for TMS's violations of the Act because TMS acts as TMC's general agent in the
14 United States for purposes of sales and marketing.

15 1754. By failing to disclose and actively concealing the dangerous risk of hacking and
16 the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with CAN buses,
17 Defendants engaged in unfair or deceptive practices prohibited by the Act, S.C. Code Ann. §§ 39-
18 5-10, *et seq.*, including (1) representing that Defective Vehicles have characteristics, uses,
19 benefits, and qualities which they do not have, (2) representing that Defective Vehicles are of a
20 particular standard, quality, and grade when they are not, (3) advertising Defective Vehicles with
21 the intent not to sell them as advertised, (4) representing that a transaction involving Defective
22 Vehicles confers or involves rights, remedies, and obligations which it does not, and
23 (5) representing that the subject of a transaction involving Defective Vehicles has been supplied
24 in accordance with a previous representation when it has not.

25 1755. As alleged above, Defendants made numerous material statements about the
26 safety and reliability of Defective Vehicles that were either false or misleading. Each of these
27 statements contributed to the deceptive context of Defendants' unlawful advertising and
28 representations as a whole.

1 1756. Defendants knew that the CAN buses in Defective Vehicles were defectively
2 designed or manufactured, were susceptible to hacking, and were not suitable for their intended
3 use. Defendants nevertheless failed to warn Plaintiffs about these inherent dangers despite having
4 a duty to do so.

5 1757. Defendants each owed Plaintiffs a duty to disclose the defective nature of
6 Defective Vehicles, including the dangerous risk of hacking and the lack of adequate fail-safe
7 mechanisms, because they:

8 1758. Possessed exclusive knowledge of the defects rendering Defective Vehicles
9 inherently more dangerous and unreliable than similar vehicles;

10 1759. Intentionally concealed the hazardous situation with Defective Vehicles through
11 their deceptive marketing campaign that they designed to hide the life-threatening problems from
12 Plaintiffs; and/or

13 1760. Made incomplete representations about the safety and reliability of Defective
14 Vehicles while purposefully withholding material facts from Plaintiffs that contradicted these
15 representations.

16 1761. Defective Vehicles equipped with CAN buses pose an unreasonable risk of death
17 or serious bodily injury to Plaintiffs, passengers, other motorists, pedestrians, and the public at
18 large, because they are susceptible to incidents of hacking.

19 1762. Whether or not a vehicle is vulnerable to hacking and can be commandeered by a
20 third party are facts that a reasonable consumer would consider important in selecting a vehicle to
21 purchase or lease. When Plaintiffs bought a Defendants Vehicle for personal, family, or
22 household purposes, they reasonably expected the vehicle would not be vulnerable to hacking,
23 and was equipped with any necessary fail-safe mechanisms.

24 1763. Defendants' unfair or deceptive trade practices were likely to and did in fact
25 deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of
26 Defective Vehicles.

27 1764. As a result of their violations of the Act detailed above, Defendants caused actual
28 damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs currently own

1 or lease, or within the class period have owned or leased, Defective Vehicles that are defective
2 and inherently unsafe. CAN bus defects have caused the value of Defective Vehicles to plummet.

3 1765. Plaintiffs risk irreparable injury as a result of Defendants' acts and omissions in
4 violation of the Act, and these violations present a continuing risk to Plaintiffs as well as to the
5 general public.

6 1766. Pursuant to S.C. Code Ann. § 39-5-140, Plaintiffs seek monetary relief against
7 Defendants to recover for their sustained losses.

8 1767. Plaintiffs further allege that Defendants' malicious and deliberate conduct
9 warrants an assessment of punitive damages because Defendants each carried out despicable
10 conduct with willful and conscious disregard of the rights and safety of others, subjecting
11 Plaintiffs to cruel and unjust hardship as a result. Defendants intentionally and willfully
12 misrepresented the safety and reliability of Defective Vehicles, deceived Plaintiffs on life-or-
13 death matters, and concealed material facts that only they knew, all to avoid the expense and
14 public relations nightmare of correcting a deadly flaw in the Defective Vehicles they repeatedly
15 promised Plaintiffs were safe. Defendants' unlawful conduct constitutes malice, oppression, and
16 fraud warranting punitive damages.

17 1768. Plaintiffs further seek an order enjoining Defendants' unfair or deceptive acts or
18 practices, restitution, punitive damages, costs of Court, attorney's fees, and any other just and
19 proper relief available under the Act.

20 **COUNT CXCIV**

21 **Violations of the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act**
22 **(South Carolina Code Annotated Sections 56-15-10, et seq.)**

23 1769. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
24 forth herein.

25 1770. Defendants are "manufacturers" as set forth in S.C. Code Ann. § 56-15-10, as
26 they are engaged in the business of manufacturing or assembling new and unused motor vehicles.

27 1771. Defendants both participated in unfair or deceptive acts or practices that violated
28 the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act ("Dealers Act"),

1 S.C. Code Ann. § 56-15-30. Defendants each are directly liable for these violations of law. TMC
2 also is liable for TMS's violations of the Dealers Act because TMS acts as TMC's general agent
3 in the United States for purposes of sales and marketing.

4 1772. Defendants have engaged in actions which were arbitrary, in bad faith,
5 unconscionable, and which caused damage to Plaintiffs, the Class, and to the public. Defendants
6 have directly participated in the wrongful conduct.

7 1773. Defendants' bad faith and unconscionable actions include, but are not limited to:
8 (1) representing that Defective Vehicles have characteristics, uses, benefits, and qualities which
9 they do not have, (2) representing that Defective Vehicles are of a particular standard, quality, and
10 grade when they are not, (3) advertising Defective Vehicles with the intent not to sell them as
11 advertised, (4) representing that a transaction involving Defective Vehicles confers or involves
12 rights, remedies, and obligations which it does not, and (5) representing that the subject of a
13 transaction involving Defective Vehicles has been supplied in accordance with a previous
14 representation when it has not.

15 1774. Defendants have resorted to and used false and misleading advertisement in
16 connection with their business. As alleged above, Defendants made numerous material statements
17 about the safety and reliability of Defective Vehicles that were either false or misleading. Each of
18 these statements contributed to the deceptive context of Defendants' unlawful advertising and
19 representations as a whole.

20 1775. Pursuant to S.C. Code Ann. § 56-15-110(2), Plaintiffs bring this action on behalf
21 of themselves and the Class, as the action is one of common or general interest to many persons
22 and the parties are too numerous to bring them all before the court.

23 1776. Plaintiffs and the Class are entitled to double the actual damages, the cost of the
24 suit, attorney's fees pursuant to S.C. Code Ann. § 56-15-110, and Plaintiffs also seek injunctive
25 relief under S.C. Code Ann. § 56-15-110. Plaintiffs also seek treble damages because Defendants
26 have acted maliciously.

27
28

COUNT CXCIV

**Breach of Contract/Common Law Warranty
(Based on South Carolina Law)**

1777. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1778. To the extent Defendants' limited remedies are deemed not to be warranties under South Carolina's Commercial Code, Plaintiffs, individually and on behalf of the other Class members, plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other Class members.

1779. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

1780. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

Claims Brought on Behalf of the South Dakota Class

COUNT CXCVI

**Breach of Express Warranty
(South Dakota Codified Laws Section 57A-2-313)**

1781. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1782. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1783. Under S.D. Codified Laws § 57A-2-318, Plaintiffs have the same standing as any direct purchaser of a vehicle from Defendants.

1784. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

1 *Repairs Covered*

2 This warranty covers repairs to correct any vehicle defect related to materials or
3 workmanship occurring during the warranty period. Needed repairs will be
4 performed using new or remanufactured parts.

5 1785. Defendants' Limited Warranties, as well as advertisements, brochures, and other
6 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
7 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
8 equipped with a CAN bus from Defendants.

9 1786. Defendants breached the express warranty to repair and adjust to correct defects
10 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
11 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
12 workmanship defects.

13 1787. In addition to these Limited Warranties, Defendants otherwise expressly
14 warranted several attributes, characteristics, and qualities of the CAN bus.

15 1788. These warranties are only a sampling of the numerous warranties that Defendants
16 made relating to safety, reliability, and operation. Generally these express warranties promise
17 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
18 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
19 on Defendants' websites, and in uniform statements provided by Defendants to be made by
20 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
21 These affirmations and promises were part of the basis of the bargain between the parties.

22 1789. These additional warranties were also breached because the Class Vehicles were
23 not fully operational, safe, or reliable (and remained so even after the problems were
24 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
25 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
26 conforming to these express warranties.

27 1790. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
28 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
29 the other Class members whole and because Defendants have failed and/or have refused to

adequately provide the promised remedies within a reasonable time.

1791. Accordingly, recovery by Plaintiffs and the other Class members is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by law.

1792. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1793. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of “replacement or adjustments,” as many incidental and consequential damages have already been suffered due to Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies would be insufficient to make Plaintiffs and the other Class members whole.

1794. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in S.D. Codified Laws § 57A-2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.

1795. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1796. As a direct and proximate result of Defendants’ breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CXCVII

**Breach of the Implied Warranty of Merchantability
(South Dakota Codified Laws Section 57A-2-314)**

1797. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1798. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1799. A warranty that the Defective Vehicles were merchantable is implied by law in the instant transactions.

1800. Under S.D. Codified Laws § 57A-2-318, Plaintiffs have the same standing as any direct purchaser of a vehicle from Defendants.

1801. These Class Vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Defendants were provided notice of these issues by numerous complaints filed against them, including the instant Complaint, and by other means.

1802. As a direct and proximate result of Defendants' breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT CXCVIII

**Violation of the South Dakota Deceptive Trade Practices Act
(South Dakota Codified Laws Section 37-24-6)**

1803. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1804. The conduct of Defendants as set forth herein constitutes deceptive acts or practices, fraud, and misrepresentation, including, but not limited to, Defendants' manufacture and sale of vehicles that are susceptible to hacking and that lack effective fail-safe mechanisms which Defendants failed to adequately investigate, disclose and remedy, and Defendants' misrepresentations and omissions regarding the safety and reliability of their vehicles.

1805. Plaintiffs and the Class were injured as a result of Defendants' conduct. Plaintiffs

1 overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their
2 vehicles have suffered a diminution in value.

3 1806. Defendants' conduct proximately caused the injuries to Plaintiffs and the Class.

4 1807. Under S.D. Codified Laws § 37-24-31, Plaintiffs and the Class are entitled to a
5 recovery of their actual damages suffered as a result of Defendants' acts and practices.

6 **COUNT CXCIX**

7 **Breach of Contract/Common Law Warranty**

8 **(Based on South Dakota Law)**

9 1808. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 1809. To the extent Defendants' limited remedies are deemed not to be warranties under
12 South Dakota's Commercial Code, Plaintiffs, individually and on behalf of the other Class
13 members, plead in the alternative under common law warranty and contract law. Defendants
14 limited the remedies available to Plaintiffs and the other Class members to repairs and
15 adjustments needed to correct defects in materials or workmanship of any part supplied by
16 Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other
17 Class members.

18 1810. Defendants breached this warranty or contract obligation by failing to repair the
19 Class Vehicles, or to replace them.

20 1811. As a direct and proximate result of Defendants' breach of contract or common
21 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
22 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
23 and consequential damages, and other damages allowed by law.

24 **Claims Brought on Behalf of the Tennessee Class**

25 **COUNT CC**

26 **Violation of Tennessee Consumer Protection Act**

27 **(Tennessee Code Annotated Sections 47-18-101, et seq.)**

28 1812. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set

1 forth herein.

2 1813. Defendants misrepresented the safety of the Defective Vehicles after learning of
3 their defects with the intent that Plaintiffs relied on such representations in their decision
4 regarding the purchase, lease and/or use of the Defective Vehicles.

5 1814. Plaintiffs did, in fact, rely on such representations in their decision regarding the
6 purchase, lease and/or use of the Defective Vehicles.

7 1815. Through these misleading and deceptive statements and false promises,
8 Defendants violated the Tennessee Consumer Protection Act.

9 1816. The Tennessee Consumer Protection Act applies to Defendants' transactions with
10 Plaintiffs because Defendants' deceptive scheme was carried out in Tennessee and affected
11 Plaintiffs.

12 1817. Defendants also failed to advise the NHSTA and the public about what they knew
13 about the vulnerability of the Defective Vehicles to hacking.

14 1818. Plaintiffs relied on Defendants' silence as to known defects in connection with
15 their decision regarding the purchase, lease and/or use of the Defective Vehicles.

16 1819. As a direct and proximate result of Defendants' deceptive conduct and violation
17 of the Tennessee Consumer Protection Act, Plaintiffs have sustained and will continue to sustain
18 economic losses and other damages for which they are entitled to compensatory and equitable
19 damages and declaratory relief in an amount to be proven at trial.

20 **COUNT CCI**

21 **Fraudulent Misrepresentation and Fraudulent Concealment**

22 **(Based on Tennessee Law)**

23 1820. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
24 forth herein.

25 1821. Defendants intentionally concealed the above-described material safety and
26 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
27 the other Class members information that is highly relevant to their purchasing decision.

28 1822. Defendants further affirmatively misrepresented to Plaintiffs in advertising and

1 other forms of communication, including standard and uniform material provided with each car,
2 that the Class Vehicles they was selling were new, had no significant defects, and would perform
3 and operate properly when driven in normal usage.

4 1823. Defendants knew these representations were false when made.

5 1824. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
6 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
7 defective CAN buses, as alleged herein.

8 1825. Defendants had a duty to disclose that these Class Vehicles were defective,
9 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
10 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
11 Class members relied on Defendants' material representations that the Class Vehicles they were
12 purchasing were safe and free from defects.

13 1826. The aforementioned concealment was material because if it had been disclosed
14 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
15 would not have bought or leased those Vehicles at the prices they paid.

16 1827. The aforementioned representations were material because they were facts that
17 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
18 knew or recklessly disregarded that their representations were false because it knew the CAN
19 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
20 sell Class Vehicles.

21 1828. Plaintiffs and the other Class members relied on Defendants' reputations – along
22 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
23 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
24 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

25 1829. As a result of their reliance, Plaintiffs and the other Class members have been
26 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
27 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
28 Class Vehicles.

1830. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

1831. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

COUNT CCII

Breach of Express Warranty (Tennessee Code Annotated Section 47-2-313)

1832. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1833. Defendants are and at all relevant times were sellers as defined by Tenn. Code Ann. § 47-2-103.

1834. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

...

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty*Warranty Period*

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

1835. Defendants' Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

1836. Defendants breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Defendants. Defendants have not repaired or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

1837. In addition to these Limited Warranties, Defendants otherwise expressly warranted several attributes, characteristics, and qualities of the CAN bus.

1838. These warranties are only a sampling of the numerous warranties that Defendants made relating to safety, reliability, and operation. Generally these express warranties promise heightened, superior, and state-of-the-art safety, reliability, and performance standards, and

1 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
2 on Defendants' websites, and in uniform statements provided by Defendants to be made by
3 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
4 These affirmations and promises were part of the basis of the bargain between the parties.

5 1839. These additional warranties were also breached because the Class Vehicles were
6 not fully operational, safe, or reliable (and remained so even after the problems were
7 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
8 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
9 conforming to these express warranties.

10 1840. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
11 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
12 the other Class members whole and because Defendants have failed and/or have refused to
13 adequately provide the promised remedies within a reasonable time.

14 1841. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
15 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
16 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
17 law.

18 1842. Also, as alleged in more detail herein, at the time that Defendants warranted and
19 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
20 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
21 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
22 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
23 pretenses.

24 1843. Moreover, many of the injuries flowing from the Class Vehicles cannot be
25 resolved through the limited remedy of "replacement or adjustments," as many incidental and
26 consequential damages have already been suffered due to Defendants' fraudulent conduct as
27 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
28 within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies

1 would be insufficient to make Plaintiffs and the other Class members whole.

2 1844. Defendants were provided notice of these issues by the instant Complaint, and by
3 other means before or within a reasonable amount of time after the allegations of Class Vehicle
4 defects became public.

5 1845. As a direct and proximate result of Defendants' breach of express warranties,
6 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

7 **COUNT CCIII**

8 **Breach of Implied Warranty of Merchantability**
9 **(Tennessee Code Annotated Section 47-2-314)**

10 1846. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
11 forth herein.

12 1847. Defendants impliedly warranted that their vehicles were of good and
13 merchantable quality and fit, and safe for their ordinary intended use – transporting the driver and
14 passengers in reasonable safety during normal operation, and without unduly endangering them or
15 members of the public.

16 1848. As described above, there were dangerous defects in the vehicles manufactured,
17 distributed, and/or sold by Defendants, which Plaintiffs purchased, including, but not limited to,
18 defects that caused the vehicles to be susceptible to hacking, and the lack of safety systems to
19 stave off an attack.

20 1849. These dangerous defects existed at the time the vehicles left Defendants'
21 manufacturing facilities and at the time they were sold to the Plaintiffs. Furthermore, because of
22 these dangerous defects, Plaintiffs did not receive the benefit of their bargain and the vehicles
23 have suffered a diminution in value.

24 1850. These dangerous defects were the direct and proximate cause of damages to the
25 Plaintiffs.

Claims Brought on Behalf of the Texas Class**COUNT CCIV****Violations of the Deceptive Trade Practices Act****(Texas Business and Commercial Code Sections 17.41, *et seq.*)**

1851. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1852. Plaintiffs and Defendants are each “persons” as defined by Tex. Bus. & Com. Code § 17.45(3). The Class Vehicles are “goods” under Tex. Bus. & Com. Code § 17.45(1). Plaintiffs and the other Texas Class members are “consumers” as defined in Tex. Bus. & Com. Code § 17.45(4). Defendants have at all relevant times engaged in “trade” and “commerce” as defined in Tex. Bus. & Com. Code § 17.45(6), by advertising, offering for sale, selling, leasing, and/or distributing the Class Vehicles in Texas, directly or indirectly affecting Texas citizens through that trade and commerce.

1853. The allegations set forth herein constitute false, misleading, or deceptive trade acts or practices in violation of Texas’s Deceptive Trade Practices-Consumer Protection Act (“DTPA”), Tex. Bus. & Com. Code §§ 17.41, *et seq.*

1854. By failing to disclose and actively concealing the defects in the Class Vehicles, Defendants engaged in deceptive business practices prohibited by the DTPA, including (1) representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Class Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Class Vehicles with the intent not to sell them as advertised, and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to the consumer.

1855. As alleged above, Defendants made numerous material statements about the benefits and characteristics of the Class Vehicles that were either false or misleading. Each of these statements contributed to the deceptive context of Defendants’ unlawful advertising and representations as a whole.

1856. Defendants knew that the CAN buses in the Class Vehicles were defectively

1 designed or manufactured, were susceptible to hacking, and were not suitable for their intended
2 use. Defendants nevertheless failed to warn Plaintiffs about these defects despite having a duty to
3 do so.

4 1857. Defendants owed Plaintiffs a duty to disclose the defective nature of the CAN
5 buses in the Class Vehicles, because Defendants:

6 1858. Possessed exclusive knowledge of the defects rendering the Class Vehicles

7 1859. more unreliable than similar vehicles;

8 1860. Intentionally concealed the defects through their deceptive marketing campaign
9 that they designed to hide the defects in the Class Vehicles; and/or

10 1861. Made incomplete representations about the characteristics and performance of the
11 Class Vehicles generally, while purposefully withholding material facts from Plaintiffs that
12 contradicted these representations.

13 1862. Defendants' unfair or deceptive acts or practices were likely to and did in fact
14 deceive reasonable consumers, including Plaintiffs, about the true performance and characteristics
15 of the Class Vehicles.

16 1863. Defendants' intentional concealment of and failure to disclose the defective nature
17 of the Class Vehicles to Plaintiffs and the other Class members constitutes an "unconscionable
18 action or course of action" under Tex. Bus. & Com. Code § 17.45(5) because, to the detriment of
19 Plaintiffs and the other Class members, that conduct took advantage of their lack of knowledge,
20 ability, and experience to a grossly unfair degree. That "unconscionable action or course of
21 action" was a producing cause of the economic damages sustained by Plaintiffs and the other
22 Class members.

23 1864. Defendants are also liable under Tex. Bus. & Com. Code § 17.50(a) because
24 Defendants' breach of the implied warranty of merchantability set forth herein was a producing
25 cause of economic damages sustained by Plaintiffs and the other Class members.

26 1865. As a result of their violations of the DTPA detailed above, Defendants caused
27 actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs
28 currently own or lease, or within the class period have owned or leased, a Class Vehicle that is

1 defective. Defects associated with the CAN bus have caused the value of Class Vehicles to
2 decrease.

3 1866. All procedural prerequisites, including notice, have been met. The giving of
4 notice to Defendants is rendered impracticable pursuant to Tex. Bus. & Com. Code § 17.505(b)
5 and unnecessary because Defendants have notice of the claims against them.

6 1867. Pursuant to Tex. Bus. & Com. Code § 17.505(b), Plaintiffs, individually and on
7 behalf of the other Class members, will send to the Texas Consumer Protection Division a copy of
8 this Complaint.

9 1868. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful
10 acts and are, therefore, entitled to damages and other relief as provided under the DTPA.

11 1869. Plaintiffs and the other Class members should be awarded three times the amount
12 of their economic damages because Defendants intentionally concealed and failed to disclose the
13 defective nature of the Class Vehicles.

14 **COUNT CCV**

15 **Breach of Express Warranty** 16 **(Texas Business and Commercial Code Section 2.313)**

17 1870. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
18 forth herein.

19 1871. Defendants are and were at all relevant times merchants with respect to motor
20 vehicles under Tex. Bus. & Com. Code § 2.104.

21 1872. In their Limited Warranties and in advertisements, brochures, and through other
22 statements in the media, Defendants expressly warranted that they would repair or replace defects
23 in material or workmanship free of charge if they became apparent during the warranty period.

24 For example, the following language appears in all Class Vehicle Warranty booklets:

25 1. Toyota's warranty

26 *When Warranty Begins*

27 The warranty period begins on the vehicle's in-service date, which is the first date
28 the vehicle is either delivered to an ultimate purchaser, leased, or used as a
company car or demonstrator.

1 *Repairs Made at No Charge*

2 Repairs and adjustments covered by these warranties are made at no charge for
3 parts and labor.

4 *Basic Warranty*

5 This warranty covers repairs and adjustments needed to correct defects in materials
6 or workmanship of any part supplied by Toyota Coverage is for 36 months or
7 36,000 miles, whichever occurs first

8 2. Ford's warranty

9 *KNOW WHEN YOUR WARRANTY BEGINS*

10 Your Warranty Start Date is the day you take delivery of your new vehicle or the
11 day it is first put into service

12 *QUICK REFERENCE: WARRANTY COVERAGE*

13 . . .

14 Your Bumper to Bumper Coverage lasts for three years - unless you drive more
15 than 36,000 miles before three years elapse.

16 *WHO PAYS FOR WARRANTY REPAIRS?*

17 You will not be charged for repairs covered by any applicable warranty during the
18 stated coverage periods

19 3. GM's warranty

20 *Warranty Period*

21 The warranty period for all coverages begins on the date the vehicle is first
22 delivered or put in use and ends at the expiration of the coverage period.

23 *Bumper-to-Bumper Coverage*

24 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
25

26 *No Charge*

27 Warranty repairs, including towing, parts, and labor, will be made at no charge.

28 *Repairs Covered*

 This warranty covers repairs to correct any vehicle defect related to materials or
workmanship occurring during the warranty period. Needed repairs will be
performed using new or remanufactured parts.

1873. Defendants' Limited Warranties, as well as advertisements, brochures, and other
statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
equipped with a CAN bus from Defendants.

1 1874. Defendants breached the express warranty to repair and adjust to correct defects
2 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
3 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
4 workmanship defects.

5 1875. In addition to these Limited Warranties, Defendants otherwise expressly
6 warranted several attributes, characteristics, and qualities of the CAN bus.

7 1876. These warranties are only a sampling of the numerous warranties that Defendants
8 made relating to safety, reliability, and operation. Generally these express warranties promise
9 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
10 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
11 on Defendants' websites, and in uniform statements provided by Defendants to be made by
12 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
13 These affirmations and promises were part of the basis of the bargain between the parties.

14 1877. These additional warranties were also breached because the Class Vehicles were
15 not fully operational, safe, or reliable (and remained so even after the problems were
16 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
17 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
18 conforming to these express warranties.

19 1878. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
20 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
21 the other Class members whole and because Defendants have failed and/or have refused to
22 adequately provide the promised remedies within a reasonable time.

23 1879. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
24 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
25 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
26 law.

27 1880. Also, as alleged in more detail herein, at the time that Defendants warranted and
28 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and

1 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
 2 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
 3 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
 4 pretenses.

5 1881. Moreover, many of the injuries flowing from the Class Vehicles cannot be
 6 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
 7 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
 8 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
 9 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
 10 would be insufficient to make Plaintiffs and the other Class members whole.

11 1882. Finally, due to Defendants’ breach of warranties as set forth herein, Plaintiffs and
 12 the other Class members assert as an additional and/or alternative remedy, as set forth in Tex.
 13 Bus. & Com. Code § 2.711, for a revocation of acceptance of the goods, and for a return to
 14 Plaintiffs and to the other Class members of the purchase price of all Class Vehicles currently
 15 owned and for such other incidental and consequential damages as allowed under Tex. Bus. &
 16 Com. Code §§ 2.711 and 2.608.

17 1883. Defendants were provided notice of these issues by the instant Complaint, and by
 18 other means before or within a reasonable amount of time after the allegations of Class Vehicle
 19 defects became public.

20 1884. As a direct and proximate result of Defendants’ breach of express warranties,
 21 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

22 COUNT CCVI

23 **Breach of the Implied Warranty of Merchantability** 24 **(Texas Business and Commercial Code Section 2.314)**

25 1885. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 26 forth herein.

27 1886. Defendants are and were at all relevant times merchants with respect to motor
 28 vehicles under Tex. Bus. & Com. Code § 2.104.

1 1887. A warranty that the Class Vehicles were in merchantable condition was implied
2 by law in the instant transactions, pursuant to Tex. Bus. & Com. Code § 2.314.

3 1888. These Class Vehicles, when sold and at all times thereafter, were not in
4 merchantable condition and are not fit for the ordinary purpose for which cars are used.
5 Defendants were provided notice of these issues by numerous complaints filed against them,
6 including the instant Complaint, and by other means.

7 1889. As a direct and proximate result of Defendants' breach of the warranties of
8 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

9 **COUNT CCVII**

10 **Breach of Contract/Common Law Warranty**
11 **(Based on Texas Law)**

12 1890. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
13 forth herein.

14 1891. To the extent Defendants' limited remedies are deemed not to be warranties under
15 the Uniform Commercial Code as adopted in Texas, Plaintiffs, individually and on behalf of the
16 other Class members, plead in the alternative under common law warranty and contract law.
17 Defendants limited the remedies available to Plaintiffs and the other Class members to repairs and
18 adjustments needed to correct defects in materials or workmanship of any part supplied by
19 Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other
20 Class members.

21 1892. Defendants breached this warranty or contract obligation by failing to repair the
22 Class Vehicles, or to replace them.

23 1893. As a direct and proximate result of Defendants' breach of contract or common
24 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
25 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
26 and consequential damages, and other damages allowed by law.

COUNT CCVIII

**Fraudulent Concealment
(Based on Texas Law)**

1894. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1895. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

1896. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Class Vehicles they was selling were new, had no significant defects, and would perform and operate properly when driven in normal usage.

1897. Defendants knew these representations were false when made.

1898. The Class Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and defective CAN buses, as alleged herein.

1899. Defendants had a duty to disclose that these Class Vehicles were defective, unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other Class members relied on Defendants' material representations that the Class Vehicles they were purchasing were safe and free from defects.

1900. The aforementioned concealment was material because if it had been disclosed Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

1901. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants knew or recklessly disregarded that their representations were false because they knew the CAN buses were susceptible to hacking. Defendants intentionally made the false statements in order to

1 sell Class Vehicles.

2 1902. Plaintiffs and the other Class members relied on Defendants' reputations – along
3 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
4 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
5 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

6 1903. As a result of their reliance, Plaintiffs and the other Class members have been
7 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
8 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
9 Class Vehicles.

10 1904. Defendants' conduct was knowing, intentional, with malice, demonstrated a
11 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
12 members.

13 1905. Plaintiffs and the other Class members are therefore entitled to an award of
14 punitive damages.

15 **Claims Brought on Behalf of the Utah Class**

16 **COUNT CCIX**

17 **Breach of Express Warranty**

18 **(Utah Code Annotated Section 70A-2-313)**

19 1906. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
20 forth herein.

21 1907. Defendants are and were at all relevant times merchants as defined by the
22 Uniform Commercial Code.

23 1908. In their Limited Warranties and in advertisements, brochures, and through other
24 statements in the media, Defendants expressly warranted that they would repair or replace defects
25 in material or workmanship free of charge if they became apparent during the warranty period.
26 For example, the following language appears in all Class Vehicle Warranty booklets:

27 1. Toyota's warranty

28 *When Warranty Begins*

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

1909. Defendants' Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was

1 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
2 equipped with a CAN bus from Defendants.

3 1910. Defendants breached the express warranty to repair and adjust to correct defects
4 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
5 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
6 workmanship defects.

7 1911. In addition to these Limited Warranties, Defendants otherwise expressly
8 warranted several attributes, characteristics, and qualities of the CAN bus.

9 1912. These warranties are only a sampling of the numerous warranties that Defendants
10 made relating to safety, reliability, and operation. Generally these express warranties promise
11 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
12 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
13 on Defendants' websites, and in uniform statements provided by Defendants to be made by
14 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
15 These affirmations and promises were part of the basis of the bargain between the parties.

16 1913. These additional warranties were also breached because the Class Vehicles were
17 not fully operational, safe, or reliable (and remained so even after the problems were
18 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
19 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
20 conforming to these express warranties.

21 1914. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
22 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
23 the other Class members whole and because Defendants have failed and/or have refused to
24 adequately provide the promised remedies within a reasonable time.

25 1915. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
26 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
27 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
28 law.

1916. Also, as alleged in more detail herein, at the time that Defendants warranted and sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1917. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved through the limited remedy of “replacement or adjustments,” as many incidental and consequential damages have already been suffered due to Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or continued failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies would be insufficient to make Plaintiffs and the other Class members whole.

1918. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in U.C.A. § 70A-2-608 for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently.

1919. Defendants were provided notice of these issues by the instant Complaint, and by other means before or within a reasonable amount of time after the allegations of Class Vehicle defects became public.

1920. As a direct and proximate result of Defendants’ breach of express warranties, Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

COUNT CCX

Breach of the Implied Warranty of Merchantability (Utah Code Annotated Section 70A-2-314)

1921. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1922. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1 1923. A warranty that the Class Vehicles were in merchantable condition is implied by
2 law in the instant transactions.

3 1924. These Class Vehicles, when sold and at all times thereafter, were not in
4 merchantable condition and are not fit for the ordinary purpose for which cars are used.
5 Defendants were provided notice of these issues by numerous complaints filed against them,
6 including the instant Complaint, and by other means.

7 1925. As a direct and proximate result of Defendants' breach of the warranties of
8 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

9 **COUNT CCXI**

10 **Breach of Contract/Common Law Warranty**
11 **(Based on Utah Law)**

12 1926. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
13 forth herein.

14 1927. To the extent Defendants' limited remedies are deemed not to be warranties under
15 the Utah Code, Plaintiffs, individually and on behalf of the other Class members, plead in the
16 alternative under common law warranty and contract law. Defendants limited the remedies
17 available to Plaintiffs and the other Class members to repairs and adjustments needed to correct
18 defects in materials or workmanship of any part supplied by Defendants, and/or warranted the
19 quality or nature of those services to Plaintiffs and the other Class members.

20 1928. Defendants breached this warranty or contract obligation by failing to repair the
21 Class Vehicles, or to replace them.

22 1929. As a direct and proximate result of Defendants' breach of contract or common
23 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
24 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
25 and consequential damages, and other damages allowed by law.

Claims Brought on Behalf of the Vermont Class

COUNT CCXII

**Violation of Vermont Consumer Fraud Act
(Vermont Statutes Annotated title 9, Sections 2451, et seq.)**

1930. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1931. The Vermont Consumer Fraud Act (“VCFA”) makes unlawful “[u]nfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce. . . .” Vt. Stat. Ann. tit. 9, § 2453(a).

1932. Defendants are sellers within the meaning of the VCFA. Vt. Stat. Ann. tit. 9, § 2451(a)(c).

1933. In the course of Defendants’ business, they willfully failed to disclose and actively concealed the dangerous risk of hacking and the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with CAN buses as described above. This was a deceptive act in that Defendants represented that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; represented that Defective Vehicles are of a particular standard and quality when they are not; and advertised Defective Vehicles with the intent not to sell them as advertised. Defendants knew or should have known that their conduct violated the VCFA.

1934. Defendants engaged in a deceptive trade practice under the VCFA when they failed to disclose material information concerning the Defendants vehicles which was known to Defendants at the time of the sale. Defendants deliberately withheld the information about the vehicles’ vulnerability to hacking in order to ensure that consumers would purchase their vehicles and to induce the consumer to enter into a transaction.

1935. The information withheld was material in that it was information that was important to consumers and likely to affect their choice of, or conduct regarding, the purchase of their cars. Defendants’ withholding of this information was likely to mislead consumers acting reasonably under the circumstances. The susceptibility of the Vehicles to hacking and their lack of a fail-safe mechanism were material to Plaintiffs and the Class. Had Plaintiffs and the Class

1 known that their Vehicles had these serious safety defects, they would not have purchased their
2 Vehicles.

3 1936. Defendants' conduct has caused or is to cause a substantial injury that is not
4 reasonably avoided by consumers, and the harm is not outweighed by a countervailing benefit to
5 consumers or competition.

6 1937. Plaintiffs and the Class have suffered injury and damages as a result of
7 Defendants' false or fraudulent representations and practices in violation of § 2453. Plaintiffs and
8 the Class overpaid for their vehicles and did not receive the benefit of their bargain. The value of
9 their vehicles has diminished now that the safety issues have come to light, and Plaintiffs and the
10 Class own vehicles that are not safe.

11 1938. Plaintiffs are entitled to recover "appropriate equitable relief" and "the amount of
12 [their] damages, or the consideration or the value of the consideration given by [them], reasonable
13 attorney's fees, and exemplary damages not exceeding three times the value of the consideration
14 given by [them]" pursuant to Vt. Stat. Ann. tit. 9, § 2461(b).

15 **COUNT CCXIII**

16 **Breach of Express Warranty**

17 **(Vermont Statutes Annotated title 9A Section 2-313)**

18 1939. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
19 forth herein.

20 1940. Defendants are and were at all relevant times merchants with respect to motor
21 vehicles.

22 1941. In their Limited Warranties and in advertisements, brochures, and through other
23 statements in the media, Defendants expressly warranted that they would repair or replace defects
24 in material or workmanship free of charge if they became apparent during the warranty period.
25 For example, the following language appears in all Class Vehicle Warranty booklets:

26 1. Toyota's warranty

27 *When Warranty Begins*

28 The warranty period begins on the vehicle's in-service date, which is the first date
the vehicle is either delivered to an ultimate purchaser, leased, or used as a

company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

3. GM's warranty

Warranty Period

The warranty period for all coverages begins on the date the vehicle is first delivered or put in use and ends at the expiration of the coverage period.

Bumper-to-Bumper Coverage

The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first

No Charge

Warranty repairs, including towing, parts, and labor, will be made at no charge.

Repairs Covered

This warranty covers repairs to correct any vehicle defect related to materials or workmanship occurring during the warranty period. Needed repairs will be performed using new or remanufactured parts.

1942. Defendants' Limited Warranties, as well as advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles equipped with a CAN bus from Defendants.

1 1943. Defendants breached the express warranty to repair and adjust to correct defects
2 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
3 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
4 workmanship defects.

5 1944. In addition to these Limited Warranties, Defendants otherwise expressly
6 warranted several attributes, characteristics, and qualities of the CAN bus.

7 1945. These warranties are only a sampling of the numerous warranties that Defendants
8 made relating to safety, reliability, and operation. Generally these express warranties promise
9 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
10 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
11 on Defendants' websites, and in uniform statements provided by Defendants to be made by
12 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
13 These affirmations and promises were part of the basis of the bargain between the parties.

14 1946. These additional warranties were also breached because the Class Vehicles were
15 not fully operational, safe, or reliable (and remained so even after the problems were
16 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
17 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
18 conforming to these express warranties.

19 1947. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
20 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
21 the other Class members whole and because Defendants have failed and/or have refused to
22 adequately provide the promised remedies within a reasonable time.

23 1948. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
24 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
25 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
26 law.

27 1949. Also, as alleged in more detail herein, at the time that Defendants warranted and
28 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and

1 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
 2 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
 3 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
 4 pretenses.

5 1950. Moreover, many of the injuries flowing from the Class Vehicles cannot be
 6 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
 7 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
 8 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
 9 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
 10 would be insufficient to make Plaintiffs and the other Class members whole.

11 1951. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
 12 and the Class assert as an additional and/or alternative remedy, as set forth in Vt. Stat. Ann. tit. 9,
 13 § 2-608, for revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class
 14 of the purchase price of all vehicles currently owned.

15 1952. Defendants were provided notice of these issues by the instant Complaint, and by
 16 other means before or within a reasonable amount of time after the allegations of Class Vehicle
 17 defects became public.

18 1953. As a direct and proximate result of Defendants’ breach of express warranties,
 19 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

20 **COUNT CCXIV**

21 **Breach of Implied Warranty of Merchantability** 22 **(Vermont Statutes Annotated title 9A Section 2-314)**

23 1954. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 24 forth herein.

25 1955. Defendants are and were at all relevant times merchants with respect to motor
 26 vehicles.

27 1956. A warranty that the Class Vehicles were in merchantable condition is implied by
 28 law in the instant transactions.

1 forth herein.

2 1964. The Virginia Consumer Protection prohibits “(5) misrepresenting that goods or
3 services have certain quantities, characteristics, ingredients, uses, or benefits; (6) misrepresenting
4 that goods or services are of a particular standard, quality, grade, style, or model; . . .
5 (8) advertising goods or services with intent not to sell them as advertised . . . ; [and] (14) using
6 any other deception, fraud, false pretense, false promise, or misrepresentation in connection with
7 a consumer transaction[.]” Va. Code Ann. § 59.1-200(A).

8 1965. Defendants are “persons” as defined by Va. Code Ann. § 59.1-198. The
9 transactions between Plaintiffs and the other Class members on one hand and Defendants on the
10 other, leading to the purchase or lease of the Class Vehicles by Plaintiffs and the other Class
11 members, are “consumer transactions” as defined by Va. Code Ann. § 59.1-198, because the
12 Class Vehicles were purchased or leased primarily for personal, family or household purposes.

13 1966. In the course of Defendants’ business, they willfully failed to disclose and
14 actively concealed the dangerous risk of hacking in Class Vehicles as described above.
15 Accordingly, Defendants engaged in acts and practices violating Va. Code Ann. § 59.1-200(A),
16 including representing that Class Vehicles have characteristics, uses, benefits, and qualities which
17 they do not have; representing that Class Vehicles are of a particular standard and quality when
18 they are not; advertising Class Vehicles with the intent not to sell them as advertised; and
19 otherwise engaging in conduct likely to deceive.

20 1967. Defendants’ actions as set forth above occurred in the conduct of trade or
21 commerce.

22 1968. Defendants’ conduct proximately caused injuries to Plaintiffs and the other Class
23 members.

24 1969. Plaintiffs and the other Class members were injured as a result of Defendants’
25 conduct in that Plaintiffs and the other Class members overpaid for their Class Vehicles and did
26 not receive the benefit of their bargain, and their Class Vehicles have suffered a diminution in
27 value. These injuries are the direct and natural consequence of Defendants’ misrepresentations
28 and omissions.

1970. Defendants actively and willfully concealed and/or suppressed the material facts regarding the defective and unreasonably dangerous nature of the CAN bus and the Class Vehicles, in whole or in part, with the intent to deceive and mislead Plaintiffs and the other Class members and to induce Plaintiffs and the other Class members to purchase or lease Class Vehicles at a higher price, which did not match the Class Vehicles' true value. Plaintiffs and the other Class members therefore seek treble damages.

COUNT CCXVII

Breach of Express Warranty (Virginia Code Annotated Section 8.2-313)

1971. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1972. Defendants are and were at all relevant times merchants with respect to motor vehicles.

1973. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the

1 day it is first put into service

2 *QUICK REFERENCE: WARRANTY COVERAGE*

3 . . .

4 Your Bumper to Bumper Coverage lasts for three years - unless you drive more
5 than 36,000 miles before three years elapse.

6 *WHO PAYS FOR WARRANTY REPAIRS?*

7 You will not be charged for repairs covered by any applicable warranty during the
8 stated coverage periods

9 3. GM's warranty

10 *Warranty Period*

11 The warranty period for all coverages begins on the date the vehicle is first
12 delivered or put in use and ends at the expiration of the coverage period.

13 *Bumper-to-Bumper Coverage*

14 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
15

16 *No Charge*

17 Warranty repairs, including towing, parts, and labor, will be made at no charge.

18 *Repairs Covered*

19 This warranty covers repairs to correct any vehicle defect related to materials or
20 workmanship occurring during the warranty period. Needed repairs will be
21 performed using new or remanufactured parts.

22 1974. Defendants' Limited Warranties, as well as advertisements, brochures, and other
23 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
24 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
25 equipped with a CAN bus from Defendants.

26 1975. Defendants breached the express warranty to repair and adjust to correct defects
27 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
28 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
workmanship defects.

1976. In addition to these Limited Warranties, Defendants otherwise expressly
warranted several attributes, characteristics, and qualities of the CAN bus.

1977. These warranties are only a sampling of the numerous warranties that Defendants
made relating to safety, reliability, and operation. Generally these express warranties promise

1 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
2 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
3 on Defendants' websites, and in uniform statements provided by Defendants to be made by
4 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
5 These affirmations and promises were part of the basis of the bargain between the parties.

6 1978. These additional warranties were also breached because the Class Vehicles were
7 not fully operational, safe, or reliable (and remained so even after the problems were
8 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
9 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
10 conforming to these express warranties.

11 1979. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
12 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
13 the other Class members whole and because Defendants have failed and/or have refused to
14 adequately provide the promised remedies within a reasonable time.

15 1980. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
16 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
17 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
18 law.

19 1981. Also, as alleged in more detail herein, at the time that Defendants warranted and
20 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
21 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
22 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
23 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
24 pretenses.

25 1982. Moreover, many of the injuries flowing from the Class Vehicles cannot be
26 resolved through the limited remedy of "replacement or adjustments," as many incidental and
27 consequential damages have already been suffered due to Defendants' fraudulent conduct as
28 alleged herein, and due to their failure and/or continued failure to provide such limited remedy

1 within a reasonable time, and any limitation on Plaintiffs' and the other Class members' remedies
2 would be insufficient to make Plaintiffs and the other Class members whole.

3 1983. Finally, due to Defendants' breach of warranties as set forth herein, Plaintiffs and
4 the other Class members assert as an additional and/or alternative remedy, as set forth in Va.
5 Code Ann. § 8.2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs
6 and to the other Class members of the purchase price of all Class Vehicles currently owned for
7 such other incidental and consequential damages as allowed under Va. Code Ann. §§ 8.2-711 and
8 8.2-608.

9 1984. Defendants were provided notice of these issues by the instant Complaint, and by
10 other means before or within a reasonable amount of time after the allegations of Class Vehicle
11 defects became public.

12 1985. As a direct and proximate result of Defendants' breach of express warranties,
13 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

14 **COUNT CCXVIII**

15 **Breach of Implied Warranty of Merchantability** 16 **(Virginia Code Annotated Section 8.2-314)**

17 1986. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
18 forth herein.

19 1987. Defendants are and were at all relevant times merchants with respect to motor
20 vehicles.

21 1988. A warranty that the Class Vehicles were in merchantable condition is implied by
22 law in the instant transactions.

23 1989. These Class Vehicles, when sold and at all times thereafter, were not in
24 merchantable condition and are not fit for the ordinary purpose for which cars are used.
25 Defendants were provided notice of these issues by numerous complaints filed against them,
26 including the instant Complaint, and by other means.

27 1990. As a direct and proximate result of Defendants' breach of the warranties of
28 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT CCXIX**Breach of Contract/Common Law Warranty
(Based on Virginia Law)**

1991. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1992. To the extent Defendants' limited remedies are deemed not to be warranties under Virginia's Commercial Code, Plaintiffs, individually and on behalf of the other Class members, plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other Class members.

1993. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

1994. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT CCXX**Fraudulent Concealment
(Based on Virginia Law)**

1995. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1996. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

1997. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Class Vehicles they was selling were new, had no significant defects, and would perform

1 and operate properly when driven in normal usage.

2 1998. Defendants knew these representations were false when made.

3 1999. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
4 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
5 defective CAN buses, as alleged herein.

6 2000. Defendants had a duty to disclose that these Class Vehicles were defective,
7 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
8 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
9 Class members relied on Defendants' material representations that the Class Vehicles they were
10 purchasing were safe and free from defects.

11 2001. The aforementioned concealment was material because if it had been disclosed
12 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
13 would not have bought or leased those Vehicles at the prices they paid.

14 2002. The aforementioned representations were material because they were facts that
15 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
16 knew or recklessly disregarded that their representations were false because they knew the CAN
17 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
18 sell Class Vehicles.

19 2003. Plaintiffs and the other Class members relied on Defendants' reputations – along
20 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
21 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
22 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

23 2004. As a result of their reliance, Plaintiffs and the other Class members have been
24 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
25 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
26 Class Vehicles.

27 2005. Defendants' conduct was knowing, intentional, with malice, demonstrated a
28 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class

1 members.

2 2006. Plaintiffs and the other Class members are therefore entitled to an award of
3 punitive damages.

4 **Claims Brought on Behalf of the Washington Class**

5 **COUNT CCXXI**

6 **Violation of the Consumer Protection Act**

7 **(Revised Code of Washington Annotated Sections 19.86.010, *et seq.*)**

8 2007. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
9 forth herein.

10 2008. The conduct of Defendants as set forth herein constitutes unfair or deceptive acts
11 or practices, including, but not limited to, Defendants' manufacture and sale of vehicles with a
12 sudden acceleration defect that lack brake-override or other effective fail-safe mechanisms, which
13 Defendants failed to adequately investigate, disclose and remedy, and their misrepresentations
14 and omissions regarding the safety and reliability of their vehicles.

15 2009. Defendants' actions as set forth above occurred in the conduct of trade or
16 commerce.

17 2010. Defendants' actions impact the public interest because Plaintiffs were injured in
18 exactly the same way as millions of others purchasing and/or leasing Defendants vehicles as a
19 result of Defendants' generalized course of deception. All of the wrongful conduct alleged herein
20 occurred, and continues to occur, in the conduct of Defendants' business.

21 2011. Plaintiffs and the Class were injured as a result of Defendants' conduct. Plaintiffs
22 overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their
23 vehicles have suffered a diminution in value.

24 2012. Defendants' conduct proximately caused the injuries to Plaintiffs and the Class.

25 2013. Defendants are liable to Plaintiffs and the Class for damages in amounts to be
26 proven at trial, including attorneys' fees, costs, and treble damages.

27 2014. Pursuant to Wash. Rev. Code Ann. § 19.86.095, Plaintiffs will serve the
28 Washington Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.

COUNT CCXXII**Breach of Express Warranty
(Revised Code of Washington Section 62A.2-313)**

2015. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2016. Defendants are and were at all relevant times merchants with respect to motor vehicles.

2017. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period.

For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

You will not be charged for repairs covered by any applicable warranty during the stated coverage periods

1 3. GM's warranty

2 *Warranty Period*

3 The warranty period for all coverages begins on the date the vehicle is first
4 delivered or put in use and ends at the expiration of the coverage period.

5 *Bumper-to-Bumper Coverage*

6 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
7

8 *No Charge*

9 Warranty repairs, including towing, parts, and labor, will be made at no charge.

10 *Repairs Covered*

11 This warranty covers repairs to correct any vehicle defect related to materials or
12 workmanship occurring during the warranty period. Needed repairs will be
13 performed using new or remanufactured parts.

14 2018. Defendants' Limited Warranties, as well as advertisements, brochures, and other
15 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
16 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
17 equipped with a CAN bus from Defendants.

18 2019. Defendants breached the express warranty to repair and adjust to correct defects
19 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
20 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
21 workmanship defects.

22 2020. In addition to these Limited Warranties, Defendants otherwise expressly
23 warranted several attributes, characteristics, and qualities of the CAN bus.

24 2021. These warranties are only a sampling of the numerous warranties that Defendants
25 made relating to safety, reliability, and operation. Generally these express warranties promise
26 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
27 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
28 on Defendants' websites, and in uniform statements provided by Defendants to be made by
29 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
30 These affirmations and promises were part of the basis of the bargain between the parties.

31 2022. These additional warranties were also breached because the Class Vehicles were

1 not fully operational, safe, or reliable (and remained so even after the problems were
2 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
3 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
4 conforming to these express warranties.

5 2023. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
6 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
7 the other Class members whole and because Defendants have failed and/or have refused to
8 adequately provide the promised remedies within a reasonable time.

9 2024. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
10 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
11 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
12 law.

13 2025. Also, as alleged in more detail herein, at the time that Defendants warranted and
14 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
15 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
16 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
17 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
18 pretenses.

19 2026. Moreover, many of the injuries flowing from the Class Vehicles cannot be
20 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
21 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
22 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
23 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
24 would be insufficient to make Plaintiffs and the other Class members whole.

25 2027. Finally, due to the Defendants’ breach of warranties as set forth herein, Plaintiffs
26 and the Class assert as an additional and/or alternative remedy, as set forth in Rev. Code Wash.
27 § 62A.2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the
28 Class of the purchase price of all vehicles currently owned.

1 2028. Defendants were provided notice of these issues by the instant Complaint, and by
2 other means before or within a reasonable amount of time after the allegations of Class Vehicle
3 defects became public.

4 2029. As a direct and proximate result of Defendants' breach of express warranties,
5 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

6 **COUNT CCXXIII**

7 **Breach of the Implied Warranty of Merchantability**
8 **(Revised Code of Washington Section 62A.2-614)**

9 2030. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 2031. Defendants are and were at all relevant times merchants with respect to motor
12 vehicles.

13 2032. A warranty that the Class Vehicles were in merchantable condition is implied by
14 law in the instant transactions.

15 2033. These Class Vehicles, when sold and at all times thereafter, were not in
16 merchantable condition and are not fit for the ordinary purpose for which cars are used.
17 Defendants were provided notice of these issues by numerous complaints filed against them,
18 including the instant Complaint, and by other means.

19 2034. Privity is not required in this case because Plaintiffs and the Class are intended
20 third-party beneficiaries of contracts between Defendants and their dealers; specifically, they are
21 the intended beneficiaries of Defendants' implied warranties. The dealers were not intended to be
22 the ultimate consumers of the Defective Vehicles and have no rights under the warranty
23 agreements provided with the Defective Vehicles; the warranty agreements were designed for and
24 intended to benefit the ultimate consumers only.

25 2035. As a direct and proximate result of Defendants' breach of the warranties of
26 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT CCXXIV

**Breach of Contract/Common Law Warranty
(Based on Washington Law)**

2036. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2037. To the extent Defendants' limited remedies are deemed not to be warranties under Washington's Commercial Code, Plaintiffs, individually and on behalf of the other Class members, plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other Class members.

2038. Defendants breached this warranty or contract obligation by failing to repair the Class Vehicles, or to replace them.

2039. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the other Class members have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT CCXXV

**Fraudulent Concealment
(Based on Washington Law)**

2040. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2041. Defendants intentionally concealed the above-described material safety and functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

2042. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car,

1 that the Class Vehicles they was selling were new, had no significant defects, and would perform
2 and operate properly when driven in normal usage.

3 2043. Defendants knew these representations were false when made.

4 2044. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
5 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
6 defective CAN buses, as alleged herein.

7 2045. Defendants had a duty to disclose that these Class Vehicles were defective,
8 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
9 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
10 Class members relied on Defendants' material representations that the Class Vehicles they were
11 purchasing were safe and free from defects.

12 2046. The aforementioned concealment was material because if it had been disclosed
13 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
14 would not have bought or leased those Vehicles at the prices they paid.

15 2047. The aforementioned representations were material because they were facts that
16 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
17 knew or recklessly disregarded that their representations were false because they knew the CAN
18 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
19 sell Class Vehicles.

20 2048. Plaintiffs and the other Class members relied on Defendants' reputations – along
21 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
22 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
23 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

24 2049. As a result of their reliance, Plaintiffs and the other Class members have been
25 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
26 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
27 Class Vehicles.

28 2050. Defendants' conduct was knowing, intentional, with malice, demonstrated a

1 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
2 members.

3 2051. Plaintiffs and the other Class members are therefore entitled to an award of
4 punitive damages.

5 **Claims Brought on Behalf of the West Virginia Class**

6 **COUNT CCXXVI**

7 **Violations of the Consumer Credit and Protection Act**
8 **(West Virginia Code Sections 46A-1-101, *et seq.*)**

9 2052. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 2053. Defendants are “persons” under W.Va. Code § 46A-1-102(31).

12 2054. Plaintiffs are “consumers,” as defined by W.Va. Code §§ and 46A-1-102(12) and
13 46A-6-102(2), who purchased or leased one or more Defective Vehicles.

14 2055. Defendants both participated in unfair or deceptive acts or practices that violated
15 the Consumer Credit and Protection Act (“CCPA”), W.Va. Code §§ 46A-1-101, *et seq.* as
16 described above and below. Defendants each are directly liable for these violations of law. TMC
17 also is liable for TMS’s violations of the CCPA because TMS acts as TMC’s general agent in the
18 United States for purposes of sales and marketing.

19 2056. By failing to disclose and actively concealing the dangerous risk of hacking and
20 the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with CAN buses,
21 Defendants engaged in deceptive business practices prohibited by the CCPA, W.Va. Code § 46A-
22 1-101, *et seq.*, including (1) representing that Defective Vehicles have characteristics, uses,
23 benefits, and qualities which they do not have, (2) representing that Defective Vehicles are of a
24 particular standard, quality, and grade when they are not, (3) advertising Defective Vehicles with
25 the intent not to sell them as advertised, (4) representing that a transaction involving Defective
26 Vehicles confers or involves rights, remedies, and obligations which it does not, and
27 (5) representing that the subject of a transaction involving Defective Vehicles has been supplied
28 in accordance with a previous representation when it has not.

1 2057. As alleged above, Defendants made numerous material statements about the
2 safety and reliability of Defective Vehicles that were either false or misleading.

3 2058. Each of these statements contributed to the deceptive context of TMC's and
4 TMS's unlawful advertising and representations as a whole.

5 2059. Defendants knew that the CAN buses in Defective Vehicles were defectively
6 designed or manufactured, were susceptible to hacking, and were not suitable for their intended
7 use. Defendants nevertheless failed to warn Plaintiffs about these inherent dangers despite having
8 a duty to do so.

9 2060. Defendants each owed Plaintiffs a duty to disclose the defective nature

10 2061. of Defective Vehicles, including the dangerous risk of hacking and the lack of
11 adequate fail-safe mechanisms, because they:

12 a) Possessed exclusive knowledge of the defects rendering Defective
13 Vehicles inherently more dangerous and unreliable than similar vehicles;

14 b) Intentionally concealed the hazardous situation with Defective Vehicles
15 through their deceptive marketing campaign that they designed to hide the life-threatening
16 problems from Plaintiffs; and/or

17 c) Made incomplete representations about the safety and reliability of
18 Defective Vehicles while purposefully withholding material facts from Plaintiffs that contradicted
19 these representations.

20 2062. Defective Vehicles equipped with CAN buses pose an unreasonable risk of death
21 or serious bodily injury to Plaintiffs, passengers, other motorists, pedestrians, and the public at
22 large, because they are susceptible to hacking.

23 2063. Whether or not a vehicle is susceptible to hacking and can be commandeered by a
24 third party are facts that a reasonable consumer would consider important in selecting a vehicle to
25 purchase or lease. When Plaintiffs bought a Defendants Vehicle for personal, family, or
26 household purposes, they reasonably expected the vehicle was not vulnerable to hacking and was
27 equipped with any necessary fail-safe mechanisms.

28 2064. Defendants' unfair or deceptive acts or practices were likely to deceive reasonable

1 consumers, including Plaintiffs, about the true safety and reliability of Defective Vehicles.

2 2065. As a result of their violations of the CCPA detailed above, Defendants caused
3 ascertainable loss to Plaintiffs and, if not stopped, will continue to harm Plaintiffs. Plaintiffs
4 currently own or lease, or within the class period have owned or leased, Defective Vehicles that
5 are defective and inherently unsafe. CAN bus defects have caused the value to Defective Vehicles
6 to plummet.

7 2066. Plaintiffs risk irreparable injury as a result of Defendants' acts and omissions in
8 violation of the CCPA, and these violations present a continuing risk to Plaintiffs as well as to the
9 general public.

10 2067. Plaintiffs will send a notice and demand letter pursuant to W.Va. Code § 46A-1-
11 106(b).

12 2068. Pursuant to W.Va. Code § 46A-1-106, Plaintiffs seek monetary relief against
13 TMS and TMC measured as the greater of (a) actual damages in an amount to be determined at
14 trial and (b) statutory damages in the amount of \$200 per violation of the CCPA for each
15 Plaintiffs and each member of the Class they seek to represent.

16 2069. Plaintiffs also seek punitive damages against Defendants because each carried out
17 despicable conduct with willful and conscious disregard of the rights and safety of others,
18 subjecting Plaintiffs to cruel and unjust hardship as a result. Defendants intentionally and
19 willfully misrepresented the safety and reliability of Defective Vehicles, deceived Plaintiffs on
20 life-or-death matters, and concealed material facts that only they knew, all to avoid the expense
21 and public relations nightmare of correcting a deadly flaw in the Defective Vehicles they
22 repeatedly promised Plaintiffs were safe. Defendants' unlawful conduct constitutes malice,
23 oppression, and fraud warranting punitive damages.

24 2070. Plaintiffs further seek an order enjoining Defendants' unfair or deceptive acts or
25 practices, restitution, punitive damages, costs of Court, attorney's fees under W.Va. Code
26 §§ 46A-5-101, *et seq.*, and any other just and proper relief available under the CCPA.

27
28

COUNT CCXXVII**Breach of Express Warranty
(West Virginia Code Section 46-2-313)**

2071. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2072. Defendants are and were at all relevant times sellers of motor vehicles under

2073. West Virginia Code Section 46-2-313, and are also “merchants” as the term is used in W.Va. Code § 46A-6-107.

2074. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota’s warranty

When Warranty Begins

The warranty period begins on the vehicle’s in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford’s warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

WHO PAYS FOR WARRANTY REPAIRS?

1 You will not be charged for repairs covered by any applicable warranty during the
2 stated coverage periods

3 3. GM's warranty

4 *Warranty Period*

5 The warranty period for all coverages begins on the date the vehicle is first
6 delivered or put in use and ends at the expiration of the coverage period.

7 *Bumper-to-Bumper Coverage*

8 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
9

10 *No Charge*

11 Warranty repairs, including towing, parts, and labor, will be made at no charge.

12 *Repairs Covered*

13 This warranty covers repairs to correct any vehicle defect related to materials or
14 workmanship occurring during the warranty period. Needed repairs will be
15 performed using new or remanufactured parts.

16 2075. Defendants' Limited Warranties, as well as advertisements, brochures, and other
17 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
18 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
19 equipped with a CAN bus from Defendants.

20 2076. Defendants breached the express warranty to repair and adjust to correct defects
21 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
22 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
23 workmanship defects.

24 2077. In addition to these Limited Warranties, Defendants otherwise expressly
25 warranted several attributes, characteristics, and qualities of the CAN bus.

26 2078. These warranties are only a sampling of the numerous warranties that Defendants
27 made relating to safety, reliability, and operation. Generally these express warranties promise
28 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
on Defendants' websites, and in uniform statements provided by Defendants to be made by
salespeople, or made publicly by Defendants' executives or by other authorized representatives.

1 These affirmations and promises were part of the basis of the bargain between the parties.

2 2079. These additional warranties were also breached because the Class Vehicles were
3 not fully operational, safe, or reliable (and remained so even after the problems were
4 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
5 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
6 conforming to these express warranties.

7 2080. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
8 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
9 the other Class members whole and because Defendants have failed and/or have refused to
10 adequately provide the promised remedies within a reasonable time.

11 2081. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
12 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
13 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
14 law.

15 2082. Also, as alleged in more detail herein, at the time that Defendants warranted and
16 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
17 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
18 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
19 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
20 pretenses.

21 2083. Moreover, many of the injuries flowing from the Class Vehicles cannot be
22 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
23 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
24 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
25 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
26 would be insufficient to make Plaintiffs and the other Class members whole.

27 2084. Finally, due to the Defendants’ breach of warranties as set forth herein,

28 2085. Plaintiffs and the Class assert as an additional and/or alternative remedy, as set

1 forth in W.Va. Code § 46A-6A-4, for a revocation of acceptance of the goods, and for a return to
 2 Plaintiffs and to the Class of the purchase price of all vehicles currently owned and for such other
 3 incidental and consequential damages as allowed under W.Va. Code §§ 46A-6A-1, *et seq.*

4 2086. Defendants were provided notice of these issues by the instant Complaint, and by
 5 other means before or within a reasonable amount of time after the allegations of Class Vehicle
 6 defects became public.

7 2087. As a direct and proximate result of Defendants' breach of express warranties,
 8 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

9 **COUNT CCXXVIII**

10 **Breach of Implied Warranty of Merchantability** 11 **(West Virginia Code Section 46-2-314)**

12 2088. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
 13 forth herein.

14 2089. Defendants are and were at all relevant times sellers of motor vehicles under

15 2090. West Virginia Code Section § 46-2-314, and are also "merchants" as the term is
 16 used in W.Va. Code §§ 46A-6-107 and 46-2-314.

17 2091. A warranty that the Class Vehicles were in merchantable condition is implied by
 18 law in the instant transactions.

19 2092. These Class Vehicles, when sold and at all times thereafter, were not in
 20 merchantable condition and are not fit for the ordinary purpose for which cars are used.
 21 Defendants were provided notice of these issues by numerous complaints filed against them,
 22 including the instant Complaint, and by other means.

23 2093. Plaintiffs and the Class have had sufficient direct dealings with either the
 24 Defendants or their agents (dealerships) to establish privity of contract between Plaintiffs and
 25 Defendants. Notwithstanding this, privity is not required in this case for the Plaintiffs pursuant to
 26 W.Va. Code § 46A-6-107. Moreover, privity is not required as to any Plaintiff because Plaintiffs
 27 and the Class are intended third-party beneficiaries of contracts between Defendants and their
 28 dealers; specifically, they are the intended beneficiaries of Defendants' implied warranties. The

1 dealers were not intended to be the ultimate consumers of the Defective Vehicles and have no
2 rights under the warranty agreements provided with the Defective Vehicles; the warranty
3 agreements were designed for and intended to benefit the ultimate users or owners only. Finally,
4 privity is also not required because Plaintiffs' and Class members' Vehicles are dangerous
5 instrumentalities due to the aforementioned defects and nonconformities.

6 2094. As a direct and proximate result of Defendants' breach of the warranties of
7 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

8 **COUNT CCXXIX**

9 **Breach of Contract/Common Law Warranty**
10 **(Based on West Virginia Law)**

11 2095. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 2096. To the extent Defendants' limited remedies are deemed not to be warranties under
14 West Virginia's Commercial Code, Plaintiffs, individually and on behalf of the other Class
15 members, plead in the alternative under common law warranty and contract law. Defendants
16 limited the remedies available to Plaintiffs and the other Class members to repairs and
17 adjustments needed to correct defects in materials or workmanship of any part supplied by
18 Defendants, and/or warranted the quality or nature of those services to Plaintiffs and the other
19 Class members.

20 2097. Defendants breached this warranty or contract obligation by failing to repair the
21 Class Vehicles, or to replace them.

22 2098. As a direct and proximate result of Defendants' breach of contract or common
23 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
24 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
25 and consequential damages, and other damages allowed by law.

Claims Brought on Behalf of the Wisconsin Class

COUNT CCXXX

**Violations of the Wisconsin Deceptive Trade Practices Act
(Wisconsin Statute Section 110.18)**

2099. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2100. Defendants' above-described acts and omissions constitute false, misleading or deceptive acts or practices under the Wisconsin Deceptive Trade Practices Act § 110.18 ("Wisconsin DTPA").

2101. By failing to disclose and misrepresenting the risk of hacking and lack of fail-safe mechanisms in Defective Vehicles equipped with CAN buses, Defendants engaged in deceptive business practices prohibited by the Wisconsin DTPA, including (1) representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Defective Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Defective Vehicles with the intent not to sell them as advertised, (4) representing that a transaction involving Defective Vehicles confers or involves rights, remedies, and obligations which it does not, and (5) representing that the subject of a transaction involving Defective Vehicles has been supplied in accordance with a previous representation when it has not.

2102. As alleged above, Defendants made numerous material statements about the safety and reliability of Defective Vehicles that were either false or misleading. Each of these statements contributed to the deceptive context of Defendants' unlawful advertising and representations as a whole.

2103. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true safety and reliability of Defective Vehicles.

2104. In purchasing or leasing their vehicles, the Plaintiffs relied on the misrepresentations and/or omissions of Defendants with respect of the safety and reliability of the

vehicles. Defendants' representations turned out not to be true because the vehicles can unexpectedly and dangerously be hacked.

2105. Had the Plaintiffs known this they would not have purchased or leased their Defective Vehicles and/or paid as much for them.

2106. Plaintiffs and the Class sustained damages as a result of the Defendants' unlawful acts and are, therefore, entitled to damages and other relief provided for under § 110.18(11)(b)(2) of the Wisconsin DTPA. Because Defendants' conduct was committed knowingly and/or intentionally, the Plaintiffs and the Class are entitled to treble damages.

2107. Plaintiffs and the Class also seek court costs and attorneys' fees under § 110.18(11)(b)(2) of the Wisconsin DTPA.

COUNT CCXXXI

Breach of Express Warranty (Wisconsin Statutes Section 402.313)

2108. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2109. Defendants are and were at all relevant times merchants with respect to motor vehicles under Wisc. Stat. § 402.104.

2110. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period.

For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

1 This warranty covers repairs and adjustments needed to correct defects in materials
2 or workmanship of any part supplied by Toyota Coverage is for 36 months or
3 36,000 miles, whichever occurs first

4 2. Ford's warranty

5 *KNOW WHEN YOUR WARRANTY BEGINS*

6 Your Warranty Start Date is the day you take delivery of your new vehicle or the
7 day it is first put into service

8 *QUICK REFERENCE: WARRANTY COVERAGE*

9 . . .

10 Your Bumper to Bumper Coverage lasts for three years - unless you drive more
11 than 36,000 miles before three years elapse.

12 *WHO PAYS FOR WARRANTY REPAIRS?*

13 You will not be charged for repairs covered by any applicable warranty during the
14 stated coverage periods

15 3. GM's warranty

16 *Warranty Period*

17 The warranty period for all coverages begins on the date the vehicle is first
18 delivered or put in use and ends at the expiration of the coverage period.

19 *Bumper-to-Bumper Coverage*

20 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
21

22 *No Charge*

23 Warranty repairs, including towing, parts, and labor, will be made at no charge.

24 *Repairs Covered*

25 This warranty covers repairs to correct any vehicle defect related to materials or
26 workmanship occurring during the warranty period. Needed repairs will be
27 performed using new or remanufactured parts.

28 2111. Defendants' Limited Warranties, as well as advertisements, brochures, and other
statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
equipped with a CAN bus from Defendants.

2112. Defendants breached the express warranty to repair and adjust to correct defects
in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
workmanship defects.

1 2113. In addition to these Limited Warranties, Defendants otherwise expressly
2 warranted several attributes, characteristics, and qualities of the CAN bus.

3 2114. These warranties are only a sampling of the numerous warranties that Defendants
4 made relating to safety, reliability, and operation. Generally these express warranties promise
5 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
6 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
7 on Defendants' websites, and in uniform statements provided by Defendants to be made by
8 salespeople, or made publicly by Defendants' executives or by other authorized representatives.
9 These affirmations and promises were part of the basis of the bargain between the parties.

10 2115. These additional warranties were also breached because the Class Vehicles were
11 not fully operational, safe, or reliable (and remained so even after the problems were
12 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
13 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
14 conforming to these express warranties.

15 2116. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
16 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
17 the other Class members whole and because Defendants have failed and/or have refused to
18 adequately provide the promised remedies within a reasonable time.

19 2117. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
20 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
21 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
22 law.

23 2118. Also, as alleged in more detail herein, at the time that Defendants warranted and
24 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
25 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
26 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
27 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
28 pretenses.

1 2125. Defendants breached this warranty or contract obligation by failing to repair the
2 Class Vehicles, or to replace them.

3 2126. As a direct and proximate result of Defendants' breach of contract or common
4 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
5 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
6 and consequential damages, and other damages allowed by law.

7 **COUNT CCXXXIII**

8 **Fraudulent Concealment**
9 **(Based on Wisconsin Law)**

10 2127. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
11 forth herein.

12 2128. Defendants intentionally concealed the above-described material safety and
13 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
14 the other Class members information that is highly relevant to their purchasing decision.

15 2129. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
16 other forms of communication, including standard and uniform material provided with each car,
17 that the Class Vehicles they was selling were new, had no significant defects, and would perform
18 and operate properly when driven in normal usage.

19 2130. Defendants knew these representations were false when made.

20 2131. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
21 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
22 defective CAN buses, as alleged herein.

23 2132. Defendants had a duty to disclose that these Class Vehicles were defective,
24 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
25 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
26 Class members relied on Defendants' material representations that the Class Vehicles they were
27 purchasing were safe and free from defects.

28 2133. The aforementioned concealment was material because if it had been disclosed

1 Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or
2 would not have bought or leased those Vehicles at the prices they paid.

3 2134. The aforementioned representations were material because they were facts that
4 would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants
5 knew or recklessly disregarded that their representations were false because they knew the CAN
6 buses were susceptible to hacking. Defendants intentionally made the false statements in order to
7 sell Class Vehicles.

8 2135. Plaintiffs and the other Class members relied on Defendants' reputations – along
9 with Defendants' failure to disclose the faulty and defective nature of the CAN bus and
10 Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other
11 similar false statements – in purchasing or leasing Defendants' Class Vehicles.

12 2136. As a result of their reliance, Plaintiffs and the other Class members have been
13 injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the
14 bargain and overpayment at the time of purchase or lease and/or the diminished value of their
15 Class Vehicles.

16 2137. Defendants' conduct was knowing, intentional, with malice, demonstrated a
17 complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class
18 members.

19 2138. Plaintiffs and the other Class members are therefore entitled to an award of
20 punitive damages.

21 **Claims Brought on Behalf of the Wyoming Class**

22 **COUNT CCXXXIV**

23 **Violation of the Wyoming Consumer Protection Act**
24 **(Wyoming Statutes Sections 45-12-105, *et seq.*)**

25 2139. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
26 forth herein.

27 2140. The Wyoming Consumer Protection Act describes that a person engages in a
28 deceptive trade practice under this act when, in the course of his business and in connection with

1 a consumer transaction he knowingly does one or more of the following, including:
2 “(iii) Represents that merchandise is of a particular standard, grade, style or model, if it is not”;
3 “(v) Represents that merchandise has been supplied in accordance with a previous representation,
4 if it has not . . .”; “(viii) Represents that a consumer transaction involves a warranty, a disclaimer
5 of warranties, particular warranty terms, or other rights, remedies or obligations if the
6 representation is false”; “(x) Advertises merchandise with intent not to sell it as advertised”; and
7 “(xv) Engages in unfair or deceptive acts or practices.” Wyo. Stat. § 45-12-105.

8 2141. In the course of Defendants’ business, they willfully failed to disclose and
9 actively concealed the dangerous risk of hacking and the lack of adequate fail-safe mechanisms in
10 Defective Vehicles equipped with CAN buses as described above. Accordingly, Defendants
11 engaged in deceptive trade practices, including representing that Defective Vehicles are of a
12 particular standard and grade, which they are not; representing that Defective Vehicles have been
13 supplied with a previous representation when they are not; advertising Defective Vehicles with
14 the intent not to sell them as advertised; representing that their transaction involves a warranty,
15 rights, remedies, or obligations that are false; and overall engaging in unfair and deceptive acts or
16 practices.

17 2142. Defendants knowingly made false representations to consumers with the intent to
18 induce consumers into purchasing Defendants vehicles. Plaintiffs reasonably relied on false
19 representations by Defendants and were induced to each purchase a Defendants vehicle, to his/her
20 detriment. As a result of these unlawful trade practices, Plaintiffs have suffered ascertainable loss.

21 2143. Plaintiffs and the Class suffered ascertainable loss caused by Defendants’ false
22 representations and failure to disclose material information. Plaintiffs and the Class overpaid for
23 their vehicles and did not receive the benefit of their bargain. The value of their vehicles has
24 diminished now that the safety issues have come to light, and Plaintiffs and the Class own
25 vehicles that are not safe.

26 2144. Defendants are “persons” as required under the statute.

27 2145. Defendants’ actions as set forth above occurred in the course of business and in
28 connection with a consumer transaction.

2146. As required under the Wyoming Consumer Protection Act, a notice letter will be sent on behalf of the Class.

COUNT CCXXXV

Breach of Express Warranty (Wyoming Statutes Section 34.1-2-313)

2147. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2148. Defendants are and were at all relevant times merchants with respect to motor vehicles.

2149. In their Limited Warranties and in advertisements, brochures, and through other statements in the media, Defendants expressly warranted that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period. For example, the following language appears in all Class Vehicle Warranty booklets:

1. Toyota's warranty

When Warranty Begins

The warranty period begins on the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator.

Repairs Made at No Charge

Repairs and adjustments covered by these warranties are made at no charge for parts and labor.

Basic Warranty

This warranty covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota Coverage is for 36 months or 36,000 miles, whichever occurs first

2. Ford's warranty

KNOW WHEN YOUR WARRANTY BEGINS

Your Warranty Start Date is the day you take delivery of your new vehicle or the day it is first put into service

QUICK REFERENCE: WARRANTY COVERAGE

. . .

Your Bumper to Bumper Coverage lasts for three years - unless you drive more than 36,000 miles before three years elapse.

1 *WHO PAYS FOR WARRANTY REPAIRS?*

2 You will not be charged for repairs covered by any applicable warranty during the
3 stated coverage periods

4 3. GM's warranty

5 *Warranty Period*

6 The warranty period for all coverages begins on the date the vehicle is first
7 delivered or put in use and ends at the expiration of the coverage period.

8 *Bumper-to-Bumper Coverage*

9 The complete vehicle is covered for 4 years or 50,000 miles, whichever comes first
10

11 *No Charge*

12 Warranty repairs, including towing, parts, and labor, will be made at no charge.

13 *Repairs Covered*

14 This warranty covers repairs to correct any vehicle defect related to materials or
15 workmanship occurring during the warranty period. Needed repairs will be
16 performed using new or remanufactured parts.

17 2150. Defendants' Limited Warranties, as well as advertisements, brochures, and other
18 statements in the media regarding the Class Vehicles, formed the basis of the bargain that was
19 reached when Plaintiffs and the other Class members purchased or leased their Class Vehicles
20 equipped with a CAN bus from Defendants.

21 2151. Defendants breached the express warranty to repair and adjust to correct defects
22 in materials and workmanship of any part supplied by Defendants. Defendants have not repaired
23 or adjusted, and have been unable to repair or adjust, the Class Vehicles' materials and
24 workmanship defects.

25 2152. In addition to these Limited Warranties, Defendants otherwise expressly
26 warranted several attributes, characteristics, and qualities of the CAN bus.

27 2153. These warranties are only a sampling of the numerous warranties that Defendants
28 made relating to safety, reliability, and operation. Generally these express warranties promise
 heightened, superior, and state-of-the-art safety, reliability, and performance standards, and
 promote the benefits of the CAN bus. These warranties were made, *inter alia*, in advertisements,
 on Defendants' websites, and in uniform statements provided by Defendants to be made by
 salespeople, or made publicly by Defendants' executives or by other authorized representatives.

1 These affirmations and promises were part of the basis of the bargain between the parties.

2 2154. These additional warranties were also breached because the Class Vehicles were
3 not fully operational, safe, or reliable (and remained so even after the problems were
4 acknowledged), nor did they comply with the warranties expressly made to purchasers or lessees.
5 Defendants did not provide at the time of sale, and have not provided since then, Class Vehicles
6 conforming to these express warranties.

7 2155. Furthermore, the limited warranty of repair and/or adjustments to defective parts,
8 fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and
9 the other Class members whole and because Defendants have failed and/or have refused to
10 adequately provide the promised remedies within a reasonable time.

11 2156. Accordingly, recovery by Plaintiffs and the other Class members is not limited to
12 the limited warranty of repair or adjustments to parts defective in materials or workmanship, and
13 Plaintiffs, individually and on behalf of the other Class members, seek all remedies as allowed by
14 law.

15 2157. Also, as alleged in more detail herein, at the time that Defendants warranted and
16 sold the Class Vehicles they knew that the Class Vehicles did not conform to the warranties and
17 were inherently defective, and Defendants wrongfully and fraudulently misrepresented and/or
18 concealed material facts regarding their Class Vehicles. Plaintiffs and the other Class members
19 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
20 pretenses.

21 2158. Moreover, many of the injuries flowing from the Class Vehicles cannot be
22 resolved through the limited remedy of “replacement or adjustments,” as many incidental and
23 consequential damages have already been suffered due to Defendants’ fraudulent conduct as
24 alleged herein, and due to their failure and/or continued failure to provide such limited remedy
25 within a reasonable time, and any limitation on Plaintiffs’ and the other Class members’ remedies
26 would be insufficient to make Plaintiffs and the other Class members whole.

27 2159. Defendants were provided notice of these issues by the instant Complaint, and by
28 other means before or within a reasonable amount of time after the allegations of Class Vehicle

1 defects became public.

2 2160. As a direct and proximate result of Defendants' breach of express warranties,
3 Plaintiffs and the other Class members have been damaged in an amount to be determined at trial.

4 **COUNT CCXXXVI**

5 **Breach of the Implied Warranty of Merchantability**
6 **(Wyoming Statutes Section 34.1-2-314)**

7 2161. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
8 forth herein.

9 2162. Defendants are and were at all relevant times merchants with respect to motor
10 vehicles.

11 2163. A warranty that the Class Vehicles were in merchantable condition is implied by
12 law in the instant transactions.

13 2164. These Class Vehicles, when sold and at all times thereafter, were not in
14 merchantable condition and are not fit for the ordinary purpose for which cars are used.
15 Defendants were provided notice of these issues by numerous complaints filed against them,
16 including the instant Complaint, and by other means.

17 2165. As a direct and proximate result of Defendants' breach of the warranties of
18 merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

19 **COUNT CCXXXVII**

20 **Breach of Contract/Common Law Warranty**
21 **(Based on Wyoming Law)**

22 2166. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
23 forth herein.

24 2167. To the extent Defendants' limited remedies are deemed not to be warranties under
25 Wyoming's Commercial Code, Plaintiffs, individually and on behalf of the other Class members,
26 plead in the alternative under common law warranty and contract law. Defendants limited the
27 remedies available to Plaintiffs and the other Class members to repairs and adjustments needed to
28 correct defects in materials or workmanship of any part supplied by Defendants, and/or warranted

1 the quality or nature of those services to Plaintiffs and the other Class members.

2 2168. Defendants breached this warranty or contract obligation by failing to repair the
3 Class Vehicles, or to replace them.

4 2169. As a direct and proximate result of Defendants' breach of contract or common
5 law warranty, Plaintiffs and the other Class members have been damaged in an amount to be
6 proven at trial, which shall include, but is not limited to, all compensatory damages, incidental
7 and consequential damages, and other damages allowed by law.

8 **COUNT CCXXXVIII**

9 **Fraudulent Concealment**
10 **(Based on Wyoming Law)**

11 2170. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 2171. Defendants intentionally concealed the above-described material safety and
14 functionality information, or acted with reckless disregard for the truth, and denied Plaintiffs and
15 the other Class members information that is highly relevant to their purchasing decision.

16 2172. Defendants further affirmatively misrepresented to Plaintiffs in advertising and
17 other forms of communication, including standard and uniform material provided with each car,
18 that the Class Vehicles they was selling were new, had no significant defects, and would perform
19 and operate properly when driven in normal usage.

20 2173. Defendants knew these representations were false when made.

21 2174. The Class Vehicles purchased or leased by Plaintiffs and the other Class members
22 were, in fact, defective, unsafe, and unreliable because the Class Vehicles contained faulty and
23 defective CAN buses, as alleged herein.

24 2175. Defendants had a duty to disclose that these Class Vehicles were defective,
25 unsafe, and unreliable in that certain crucial safety functions of the Class Vehicles would be
26 rendered inoperative due to faulty and defective CAN buses, because Plaintiffs and the other
27 Class members relied on Defendants' material representations that the Class Vehicles they were
28 purchasing were safe and free from defects.

2176. The aforementioned concealment was material because if it had been disclosed Plaintiffs and the other Class members would not have bought or leased the Class Vehicles, or would not have bought or leased those Vehicles at the prices they paid.

2177. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Defendants knew or recklessly disregarded that their representations were false because they knew the CAN buses were susceptible to hacking. Defendants intentionally made the false statements in order to sell Class Vehicles.

2178. Plaintiffs and the other Class members relied on Defendants' reputations – along with Defendants' failure to disclose the faulty and defective nature of the CAN bus and Defendants' affirmative assurances that their Class Vehicles were safe and reliable, and other similar false statements – in purchasing or leasing Defendants' Class Vehicles.

2179. As a result of their reliance, Plaintiffs and the other Class members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase or lease and/or the diminished value of their Class Vehicles.

2180. Defendants' conduct was knowing, intentional, with malice, demonstrated a complete lack of care, and was in reckless disregard for the rights of Plaintiffs and the other Class members.

2181. Plaintiffs and the other Class members are therefore entitled to an award of punitive damages.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of members of the Nationwide and California Classes, respectfully request that the Court enter judgment in their favor and against Defendants, as follows:

A. Certification of the proposed Nationwide Class and California Class, including appointment of Plaintiffs' counsel as Class Counsel;

B. An order temporarily and permanently enjoining Defendants from continuing the

unlawful, deceptive, fraudulent, and unfair business practices alleged in this

C. Complaint;

D. Injunctive relief in the form of a recall or free replacement program;

E. Costs, restitution, damages, including punitive damages, and disgorgement in an amount to be determined at trial;

F. An order requiring Defendants to pay both pre- and post-judgment interest on any amounts awarded;

G. An award of costs and attorneys' fees; and

H. Such other or further relief as may be appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial for all claims so triable.

DATED: March 10, 2015

STANLEY LAW GROUP
MATTHEW J. ZEVIN

/s/ Matthew J. Zevin
MATTHEW J. ZEVIN

225 Broadway, Suite 1350
San Diego, CA 92101
Telephone: (619) 235-5306
Facsimile: (815) 377-8419
e-mail: mzevin@aol.com

STANLEY LAW GROUP
MARC R. STANLEY, Texas SBN: 19046500
(*pro hac vice* to be filed)
MARTIN WOODWARD, Texas SBN: 00797693
(*pro hac vice* to be filed)
6116 North Central Expressway, Suite 1500
Dallas, TX 75206
Telephone: (214) 443-4300
Facsimile: (214) 443-0358
e-mail: marcstanley@mac.com
mwoodward@stanleylawgroup.com

Attorneys for Plaintiffs, Helene Cahen, Kerry J.
Tompulis, and Merrill Nisam